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No.

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In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

LELAND THOMPSON, JR., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether Section 4 of the Pueblo Lands Act of 1924, ch. 331, 43 Stat. 637, as amended by Section 6 of the Act of May 31, 1933, ch. 45, 48 Stat. 110-111, which on its face bars only actions by Pueblo Indians, implicitly bars this action brought by the United States, in its sovereign capacity, to quiet title to land granted by Spain, and confirmed by Act of Congress, to the Pueblo of Santo Domingo.

2. Whether the same provision bars the quiet title action by the Pueblo or the United States, even though no dispositive plat and field notes were filed under Section 13 of the Pueblo Lands Act, 43 Stat. 640-641, to extinguish the Pueblo's title and any claim of the United States with respect to the land at issue.

PARTIES TO THE PROCEEDING

The petitioner is the United States of America.

The respondents are:

Leland Thompson, Jr., La Bajada Ranch, Los Atrevidos, Caroline Thompson, Julie C. Thompson, Leland C. Thompson, and Warren A. Thompson;

The Public Service Company of New Mexico, The Gas Company of New Mexico, and Buena Vista Estates, Inc.;

Marian Noelke Atchison, Howell E. Noelke, and PBC Associates;

Senator Jeff Bingaman, Anne K. Bingaman, Alice Catron, Thomas B. Catron, III, John S. Catron, Thomas B. Catron, III, Trustee, and Norman K. Toerge;

Cherokee and Pittsburgh Coal and Mining Company, Santa Fe Mining Company, Inc.;

The Atchison, Topeka & Santa Fe Railway Company;

Jean Jacques Alexandre and Natalie Alexandre, Thomas L. Andrews, Robert & Mamie Taylor, Edmund Ball, Karl Kernberger, Barbara Cummins and Ernest Cummins, Lynne Bundesen, BMP Development Company;

The Pueblo of Santo Domingo.

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LELAND THOMPSON, JR., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-17a) is reported at 941 F.2d 1074. The opinion of the district court (App., *infra*, 18a-40a) is reported at 708 F. Supp. 1206.

JURISDICTION

The judgment of the court of appeals was entered on August 12, 1991. A petition for rehearing filed by the United States was denied on October 21, 1991. App., *infra*, 41a-42a. On January 13, 1992, Justice White extended the time for filing a petition

for a writ of certiorari to and including February 18, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

The Pueblo Lands Act of 1924, ch. 331, 43 Stat. 636, and the Act of May 31, 1933, ch. 45, 48 Stat. 108, are reproduced at App., *infra*, 43a-63a.

STATEMENT

This is an action brought by the United States on behalf of the Pueblo of Santo Domingo to quiet title to approximately 24,000 acres of land in central New Mexico between Albuquerque and Santa Fe. The Pueblo claims the land pursuant to a seventeenth-century grant from Spain, which Congress subsequently confirmed. Respondents claim the same land pursuant to a later grant from Spain to a non-Indian. The courts below did not resolve the merits of the title dispute, but instead held that the claim is barred by Section 4 of the Pueblo Lands Act of 1924, ch. 331, 43 Stat. 637, as amended by Section 6 of the Act of May 31, 1933, ch. 45, 48 Stat. 110.

1. The Pueblo Indians inhabited their lands since long before the arrival of Europeans in North America in the late fifteenth century. See, *e.g.*, Alvin M. Josephy, Jr., *The Indian Heritage of America* 158-161 (1968) (discussing the development of Pueblo culture from the eighth century until the arrival of the Spaniards in New Mexico in the sixteenth century). With respect to the land at issue in this case, the King of Spain confirmed the title of the Pueblo of Santo Domingo in a 1689 grant. The United States acquired sovereignty over New Mexico in 1848 through Article V of the Treaty of Guadalupe

Hidalgo.[1] Shortly thereafter, Congress confirmed the Spanish grant to the Pueblo. Act of Dec. 22, 1858, ch. 5, 11 Stat. 374. In 1879, Congress also confirmed a later Spanish grant, which is claimed to overlap the Pueblo's grant as to the land in question. See Act of Jan. 28, 1879, ch. 31, 20 Stat. 592 (referring to the Mesita de Juana Lopez Grant).

Because of its perception at the time that the Pueblo Indians differed from other Indians, this Court held in *United States* v. *Joseph*, 94 U.S. 614 (1876), that the Pueblos were not Indian tribes for purposes of the restrictions on white land settlements set forth in Section 11 of the Trade and Intercourse Act of 1834, ch. 161, 4 Stat. 730. See Felix S. Cohen, *Handbook of Federal Indian Law* 93-95 (1982). Accordingly, although Section 12 of the Trade and Intercourse Act, 4 Stat. 730-731, provided that Indian tribes did not have the capacity to convey land without the consent of the United States, it generally was believed in the closing decades of the nineteenth century that the Pueblos could convey title to land they owned. See *Mountain States Telephone & Telegraph Co.* v. *Pueblo of Santa Ana*, 472 U.S. 237, 240-242 (1985). In *United States* v. *Sandoval*, 231 U.S. 28, 36-49 (1913), however, the Court held that the Pueblo Indians were sufficiently like other Indians to permit Congress to apply to lands owned by the Pueblos the prohibition against introducing alcohol into Indian country. Because the Court's opinion in *Sandoval* expressly discredited some of the factual premises on which the decision in *Joseph* had rested, see 231 U.S. at 48-49, it created considerable uncer-

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[1] Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Feb. 2, 1848, United States-Mexico, 9 Stat. 926-928.

tainty as to the continuing force of *Joseph*, and thus clouded the title of any land non-Indians had acquired from the Pueblos. See *Mountain States*, 472 U.S. at 242-243; Cohen, *supra*, at 95-96.[2]

2. In response to this problem, Congress enacted the Pueblo Lands Act of 1924, ch. 331, 43 Stat. 636.[3]

a. Section 2 of the Act created an administrative body called the Pueblo Lands Board, composed of the Secretary of the Interior, the Attorney General, and a third member appointed by the President, and charged the Board with the responsibility of determining the validity of non-Indian claims to land that originally had been granted to the Pueblos. 43 Stat. 636. Under Section 4 of the Act, a non-Indian claimant could defeat Indian title if the non-Indian could show continuous, open, and notorious adverse possession and the payment of taxes from 1889 to 1924, or, if possession had been under color of title, from 1902 to 1924. 43 Stat. 637. Section 2 of the Act obligated the Board to prepare a report describing all lands owned by each Pueblo other than the lands as to which it found that Section 4's adverse possession criteria had been satisfied. 43 Stat. 636.

Congress provided two complementary ways for implementing the determinations reflected in the Section 2 reports. First, with respect to lands described in a report as belonging to the Pueblo, the Attorney General was directed by Section 3 to file a suit to quiet title in the name of the Pueblo. 43 Stat. 636-

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[2] The Court eventually resolved this controversy in *United States* v. *Candelaria*, 271 U.S. 432, 441-442 (1926), holding that the Pueblos were Indian Tribes within the meaning of the Trade and Intercourse Act.

[3] For a general discussion of the Act, see *Mountain States*, 472 U.S. at 244-247.

637.[4] Second, with respect to lands described as belonging to non-Indian claimants, Section 13 of the Act permitted the Secretary of the Interior, at any time more than two years after the filing of the Board's report, to file field notes and a plat in the office of the Surveyor General of New Mexico, showing the lands for which the Indian title was to be extinguished. 43 Stat. 640-641. The Act provided that the field notes and plat would be "competent and conclusive evidence of the extinguishment of all the right, title, and interest of the Indians in and to the lands so described in said plat and field notes and of any claim of the United States in or to the same." 43 Stat. 640.

b. Although the adverse possession provisions set forth in Section 4 of the Act were designed to resolve adverse possession claims by non-Indian claimants, two provisions of the Act demonstrate that the Act was not intended to provide a definitive resolution of *all* claims to Pueblo lands. First, Section 4 of the Act expressly preserved the right of the Pueblos to file independent proceedings "to assert and maintain unaffected by the provisions of th[e] Act their title and right to any land * * * in any court of competent jurisdiction * * * at any time prior to the filing of the field notes and plats as provided in section 13." 43 Stat. 637.[5] Second, Section 14 of the Act provided

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[4] If a non-Indian defendant to such a suit successfully established adverse possession sufficient to defeat the Indian title under the criteria established in Sections 4(a) and 4(b), the defendant would be entitled to a decree in his favor, which would have the effect "of a deed of quitclaim as against the United States and said Indians." § 5, 43 Stat. 637.

[5] Because the filing of a plat and field notes covering lands at issue in a Section 4 action would divest the Pueblos of title

that the Act would not dispose of non-Indian claims based on grants from Spain or Mexico. 43 Stat. 641. If any non-Indian defendant in a Section 3 suit brought by the Attorney General relied on such a grant to establish title superior to the Pueblo's, the court nevertheless was barred from entering a judgment against the Pueblo. Instead, the court was to determine the value of the land held by the non-Indian claimant, and the results were to be reported to Congress by the Secretary of the Interior, so that Congress could compensate the non-Indian claimant. 43 Stat. 641; see App., *infra*, 4a, 14a, 39a.

c. A key problem in the operation of the Pueblo Lands Act was that Section 13 prohibited the Secretary from filing the field notes and plat, and thus finally divesting the Pueblos of title, as long as any independent action brought by the Pueblos under Section 4 claiming title to the land in question was pending. See note 5, *supra*. The problem was exacerbated by widespread dissatisfaction on the part of the Pueblos with the compensation offered to them by the Board pursuant to Section 6 of the Act,[6] which led to a great number of Section 4 suits. See

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and thus moot the Section 4 action, Section 13 required the plat and field notes to "exclud[e] * * * lands claimed by or for the Indians in court proceedings then pending." 43 Stat. 640.

[6] Section 6 provided for payment of compensation by the United States for those lands in which the Board found the Indian title had been extinguished under Section 4, but which possibly could have been previously recovered by the United States in an action brought within the limitations period under the laws of the Territory or State of New Mexico. 43 Stat. 637-638.

New Mexico v. *Aamodt*, 537 F.2d 1102, 1116-1117 (10th Cir. 1976) (Barrett, J., dissenting), cert. denied, 429 U.S. 1121 (1977); S. Rep. No. 678, 72d Cong., 1st Sess. 5 (1932) (noting that the Pueblo Lands Board originally compensated the Pueblos at about one-third of the appraised value of land, less improvements).

To respond to this problem, Congress passed the Act of May 31, 1933, ch. 45, 48 Stat. 108. That Act had two key features. First, it appropriated various sums to pay the Pueblos the full appraised value of lands for which compensation was due under Section 6 of the 1924 Act. See Sections 1-3, 5, 48 Stat. 108-110. Second, it authorized the Secretary of the Interior to enter into contracts with the Pueblos pursuant to which the Pueblos would abandon all pending and contemplated Section 4 actions and accept the appropriated funds "in full discharge of all claims to compensation under the terms of [the 1924] Act." Section 6, 48 Stat. 111. Any Pueblo that did not accept this arrangement would be barred from filing any new Section 4 suits after May 31, 1934. *Ibid.*

3. This case arises out of the Section 2 report issued by the Board with respect to the Santo Domingo Pueblo. That report confirmed that the Pueblo had title to the entirety of the lands granted to it by Spain other than 36 listed exceptions, and for lands overlapped by certain conflicting Spanish grants, including the Mesita de Juana Lopez grant at issue in this case. See App., *infra*, 4a-5a. Although the 36 listed exceptions were ascribed to specified non-Indian claimants who were found to have satisfied the adverse possession standards in Section 4(a) or 4(b), there was no claimant or adverse possession finding

under Section 4(a) or 4(b) for the overlapping land covered by the Mesita de Juana Lopez grant. See *id.* at 5a. When the United States filed the Section 3 action to quiet title to land the Board had confirmed to the Pueblo, it omitted not only the 36 listed exceptions for non-Indian claims it found to be valid (as the Act required), but also the overlap lands. See *ibid.* Subsequently, a plat and field notes were filed extinguishing the Pueblo's title to the parcels covered by the listed exceptions, but the parties stipulated—and the court of appeals proceeded on the premise—that there is no evidence that a plat and field notes were ever filed for the overlap lands. See App., *infra*, 5a n.2. Subsequently, the Pueblo accepted the compensation ($4256.56) offered by the Secretary of the Interior pursuant to the 1933 Act (which was only for the land covered by the 36 listed exceptions, not the overlap land), and entered into a contract abandoning all suits pursuant to Section 4. Agreement Between Pueblo of Santo Domingo and Harold L. Ickes, Secretary of the Interior, dated November 7, 1933, 3 Gov't C.A. App., Tab B-2.

4. In 1984, the United States, acting in its capacity as a fiduciary for the Pueblo of Santo Domingo,[7] commenced this action to quiet title to the overlap lands in the Pueblo.[8] The district court dismissed the action. App., *infra*, 18a-40a. Relying on the Act's general policy to provide "for the final adjudication and settlement" of Pueblo land titles, App., *infra*, 34a (emphasis omitted) (quoting *Mountain*

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[7] For discussion of the right of the United States to sue to establish title on behalf of Indian tribes, see *Moe* v. *Salish & Kootenai Tribes*, 425 U.S. 463, 472-473 (1976), and *Heckman* v. *United States*, 224 U.S. 413, 428-448 (1912).

[8] The Pueblo subsequently intervened as a plaintiff.

States, 472 U.S. at 240), the court concluded that Section 4 of the Act barred the Pueblo from bringing suit, even though no plat and field notes covering the land were ever filed under Section 13. App., *infra*, 26a-34a. The court then held that, although Sections 4 and 13 refer "only to the Pueblos," *id.* at 37a, the same provisions also barred actions by the United States as trustee for the Pueblo. App., *infra*, 37a-39a.

5. The court of appeals affirmed. App., *infra*, 1a-17a. With respect to the first question presented by this petition, the court acknowledged the United States' argument that it is not bound by a statute of limitations absent an express statement by Congress, but rejected any application of that rule to this case. App., *infra*, 15a-16a. Without citing any authority, the court held that because "the federal government is suing as trustee for the Pueblo, * * * [t]he government * * * stands in the shoes of the Pueblo and must be bound by the clear import of the * * * [provisions of the Pueblo Lands Act]." *Id.* at 16a. The court explained that, in its view, "[t]he purpose of Congress would be frustrated if we allowed the federal government to bring the instant suit on behalf of the Pueblo." *Ibid.*

The court also rejected the argument that the statute of limitations had not run because of the failure by the Secretary of the Interior to file a plat and field notes for the land in question, which would have had the effect under Section 13 of extinguishing the Indians' title and any claim of the United States to the land. The court held that, whatever the meaning of Section 4 of the original 1924 Act, the 1933 Act's amendment established an absolute bar on all actions, without regard to the filing of the plat and field notes. App., *infra*, 16a-17a.

REASONS FOR GRANTING THE PETITION

The court of appeals has held that neither the United States nor the Pueblo of Santo Domingo may file suit to quiet title to a large portion of the land that was occupied by the Pueblo since before the arrival of the Spanish, granted to the Pueblo by the King of Spain more than three centuries ago, and confirmed to the Pueblo by Act of Congress more than a century ago. The court of appeals so held even though it acknowledged (and respondents conceded) that the grant to the Pueblo was prior in time; that respondents and their predecessors-in-interest never filed any claims or established adverse possession of the land under Section 4 of the Pueblo Lands Act; and that Section 14 of the Act prohibited a court from extinguishing a Pueblo's title to such overlap land even if the non-Indian's title was superior. App., *infra*, 2a, 5a, 12a-13a. The decision effectively deprives the Pueblo and the United States (in its independent sovereign capacity as trustee) of their day in court to press these longstanding claims. The decision is flatly contrary to established principles regarding the interposition of statutes of limitations against actions by the sovereign. It also reflects a serious misunderstanding of the Pueblo Lands Act of 1924, causes serious harm and injustice to the Pueblo, and frustrates the United States' fulfillment of its trust responsibility with respect to the lands at issue. Accordingly, the decision merits plenary review in this Court.

1. From the days of the English common law, and continuing into the present, it has been a fundamental principle that statutes of limitations do not run against the sovereign. As this Court has explained, this rule—reflected in the common law precept "quod

nullum tempus occurrit regi" ("that no time runs against the king")—may "appea[r] to be a vestigial survival of the prerogative of the Crown," but "the source of its continuing vitality where the royal privilege no longer exists is to be found in the public policy now underlying the rule even though it may in the beginning have had a different policy basis." *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 132 (1938). The *Guaranty Trust* Court explained the policy as follows:

> "The true reason . . . is to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers." * * * [T]he rule is supportable now because its benefit and advantage extend to every citizen, including the defendant, whose plea of laches or limitation it precludes; and its uniform survival in the United States has been generally accounted for and justified on grounds of policy.

Ibid. (quoting *United States* v. *Hoar*, 26 F. Cas. 329, 330 (C.C.D. Mass. 1821) (No. 15,373) (Story, J.)). This Court has reaffirmed this rule on many occasions[9] and has never suggested any reason to call

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[9] See, *e.g.*, *Badaracco* v. *Commissioner*, 464 U.S. 386, 391 (1984) ("Statutes of limitation sought to be applied to bar rights of the Government, must receive a strict construction in favor of the Government.") (quoting *E.I. Dupont de Nemours & Co.* v. *Davis*, 264 U.S. 456, 462 (1924)); *Block* v. *North Dakota*, 461 U.S. 273, 290 (1983) (noting that the "rule that a sovereign is normally exempt from the operation of a generally worded statute of limitations has retained its vigor because it serves the public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers"); *United States* v. *Whited & Wheless, Limited*, 246 U.S. 552, 561 (1918) (referring to

into question its continued vitality. See *Block* v. *North Dakota*, 461 U.S. 273, 290 (1983) (noting that the rule "has retained its vigor").

Because the rule requires "not a liberal, but a restrictive, a strict, construction of such statutes when it has been urged to apply them to bar the rights of the Government," *Whited & Wheless*, 246 U.S. 552, 561 (1918), its proper application in this case is simple and straightforward. Section 4 of the Pueblo Lands Act limits the time during which "the Pueblo Indians of New Mexico" may "assert * * * their title and right to any land" to "any time prior to the filing of the field notes and plats as provided in section 13 hereof." 43 Stat. 637. Nothing in this provision refers to actions by the United States. Accordingly, Section 4 does not bar this action by the United States.

The structure of the Act provides strong reinforcement for this conclusion. The Act is replete with evidence that Congress understood the United States and the Pueblos to have separate interests, both of which were addressed in different provisions of the Act. For example, Section 5 provided that in a quiet title suit brought by the United States under Section 3, a successful plea of limitations by a non-Indian claimant pursuant to the adverse possession criteria established in Sections 4(a) and 4(b), 43 Stat. 637, would "have the effect of a deed of quitclaim as against the United States *and* said Indians." 43 Stat.

"the rule of law settled 'as a great principle of public policy' that the 'United States, asserting rights vested in them as a sovereign government are not bound by any statute of limitations, unless Congress has clearly manifested its intention that they should be so bound' ") (quoting *United States* v. *Nashville, Chattanooga & St. Louis Railway*, 118 U.S. 120, 125 (1886)).

637 (emphasis added). Similarly, Section 13 provided that the filed plat and field notes would be "competent and conclusive evidence of the extinguishment of all the right, title, and interest of the Indians in and to the lands so described in said plat and field notes *and* of any claim of the United States in or to the same." 43 Stat. 640 (emphasis added). These sections expressly bound the United States, whereas Section 4 did not. As a result, it would be quite odd, apart from the canon of construction discussed above, to conclude that Section 4 had any effect on suits by the United States. But in light of the consistent practice reflected in that canon, the conclusion of the lower courts is completely insupportable.[10]

The lower courts offered only two reasons for rejecting this conclusion. First, both courts suggested that it would have been unwise for Congress to have adopted a scheme allowing the United States to con-

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[10] The conclusion that Congress might establish different limitations periods for suits by the Pueblos on their own behalf and for suits by the United States on behalf of the Pueblos draws powerful support from Congress' similar practice with respect to Indian claims in 28 U.S.C. 2415. As this Court explained in *County of Oneida* v. *Oneida Indian Nation*, 470 U.S. 226, 241-243 (1985) (*Oneida II*), when Congress established a general statute of limitations for suits by the United States on behalf of Indians, it provided an express exception for suits dealing with title to land, 28 U.S.C. 2415(c), and then repeatedly extended the limitations period established for other suits under Section 2415 to ensure that the United States had an opportunity to bring all relevant claims. But while it expressly addressed the rights of the United States, it was clear that Congress had no intention of limiting the rights of the Indians to sue on their own behalf, which at the time were "not otherwise subject to any statute of limitations." *Oneida II*, 470 U.S. at 242.

tinue to sue while barring suits by the Pueblos. See App., *infra*, 16a, 38a. Putting to one side the irrelevance of the wisdom of the scheme adopted by Congress, the suggestion is meritless. The statutory scheme as a whole in fact does provide a bar to long-delayed suits by the United States: the filing of a plat and field notes under Section 13, which "extinguish[es] * * * any claim of the United States in or to the [land covered by the plat and field notes]." 43 Stat. 640. The fact that Section 4 does not also bar the United States is not at all surprising; as discussed in note 10, *supra*, Congress customarily establishes different limitations schemes for suits by the United States, on the one hand, and the Indians, on the other.

Second, the court of appeals suggested that the suit by the United States was barred because the United States was suing only "as trustee for the Pueblo" and thus "stands in the shoes of the Pueblo." App., *infra*, 16a. This analysis is inconsistent with this Court's explanation of the trust relationship with the Pueblos in *United States* v. *Candelaria*, 271 U.S. 432 (1926). In that case, the United States sued parties who had prevailed in quiet title actions against the Pueblo of Laguna. The United States argued that the earlier actions did not bar a suit by the United States to recover the land for the Pueblo because the United States had not participated in those actions. This Court agreed:

> The Indians of the pueblo are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any-wise without its consent. A judgment or decree which operates directly or indirectly to transfer the lands from the Indians, where the United States has not authorized or appeared in

> the suit, infringes that restriction. The United States has an interest in maintaining and enforcing the restriction which cannot be affected by such a judgment or decree.

271 U.S. at 443-444. *Candelaria* makes it clear that the interest of the United States in fulfilling its fiduciary obligations is distinct from the Pueblos' interest in reclaiming its land. See *United States* v. *Minnesota*, 270 U.S. 181, 194 (1926) (holding that the United States could commence an original action to reclaim land for Chippewa Indians because the United States was the real party in interest; explaining that the "interest arises out of its guardianship over the Indians, and out of its right to invoke the aid of a court of equity in removing unlawful obstacles to the fulfillment of its obligations; and in both aspects the interest is one which is vested in it as a sovereign"). In sum, because the United States would not have been bound by an unsuccessful lawsuit by the Pueblo pursuant to Section 4, it makes no sense to conclude that the United States is bound implicitly by the Pueblo's mere failure to file an action under Section 4.

2. The court of appeals also erred seriously in interpreting the Pueblo Lands Act. As discussed above, the Act provides two complementary procedures for resolving title disputes: actions by the Attorney General under Section 3 to quiet title in favor of the Pueblos, and the filing by the Secretary of the Interior of a plat and field notes under Section 13 to extinguish Indian title.[11] The independent suit provi-

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[11] For completeness, we note that there is a third method of definitively resolving title. As discussed in note 4, *supra*, a non-Indian claimant who successfully resisted the Attorney

sion in Section 4 dovetails neatly into this process by allowing independent suits to be filed *only* "prior to the filing of the field notes and plats as provided in section 13." 43 Stat. 637. Thus, contrary to the analysis of the court of appeals, Section 4 is not the provision that divests the Pueblo of title; it simply prevents the Pueblo from filing additional suits once a Section 13 filing conclusively has resolved the question of title. The terms of Section 13, in turn, precisely establish the substantive effect of the filing of the field notes and plat: they will be "competent and conclusive evidence of the extinguishment of all the right, title, and interest of the Indians *in and to the lands so described in said plat and field notes* and of the claim of the United States *in or to the same*." 43 Stat. 640 (emphasis added). Because this case has proceeded on the premise that no plat or field notes were filed for the land at issue in this suit, the Act does not interpose a bar to this suit.

The court of appeals suggested (App., *infra*, 17a) that, even if the 1924 Act did not bar the suit, somehow Section 6 of the 1933 Act broadened the effect of Section 4 to bar all Pueblo land claims—to any land, wherever situated—as of one year from the date of the 1933 Act's passage. This suggestion is incorrect. The proviso to Section 6 establishing the one-year limitations period has no application to this case; by its terms, the proviso applies only to Pueblos that did not make the election to accept the compensation offered by the 1933 Act. As discussed above, *supra*, at 8, the Pueblo of Santo Domingo did make such an elec-

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General's Section 3 action also would gain clear title as against both the United States and the Pueblo.

tion and hence the 1933 Act has no relevance to this case.[12]

The weakness of the analysis of the court of appeals is revealed by the absurdity of the result in this case. The Pueblo and the United States are barred from filing suit to quiet title to this land based

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[12] In any event, the suggestion reflects a misunderstanding of the import of the 1933 Act. As discussed above, *supra*, at 6-7, the 1933 Act arose out of the Secretary's inability to complete the process contemplated by the 1924 Act. Under the 1924 Act the Secretary could not file a plat and field notes to implement the Board's adverse possession findings with respect to land for which the Pueblos had pending actions under Section 4. The 1933 Act dealt with this problem by preventing any further actions under Section 4: once existing actions were dealt with, the Secretary would be able to file definitive plats and field notes establishing clear title for non-Indian claimants who had been successful before the Board. Although the agreement between the Pueblo and the Secretary pursuant to Section 6 of the 1933 Act cleared the way for the Secretary to file the plat and field notes for the lands to which non-Indians had filed exceptions, the agreement did not compensate the Indians for the overlap lands, and no filing was ever made with respect to them.

There is nothing in the text of the 1933 Act to suggest that it broadens the effect of Section 4 to establish a general bar to actions related to land as to which the Board did not even find title to have been extinguished. Rather, the repeated references in Section 6 to suits authorized under Section 4 of the 1924 Act suggest that the sole effect of Section 6 was to prevent the Pueblo from using Section 4 suits to force further delays in the Secretary's compliance with Section 13. Section 6 of the 1933 Act thus enabled the Secretary to proceed to grant clear title to the non-Indian claimants identified by the Board. Because the Board did not find that any such claimant had attained adverse possession of the land at issue here, the one-year limitation in Section 6 of the 1933 Act would not apply to this suit even if the proviso were applicable to the Pueblo as a general matter.

on a statement in an administrative report that merely declined to confirm the Pueblo's title with respect to the lands in question. See App., *infra*, 4a ("title * * * in said Pueblo has not been extinguished * * * as to the lands described and set forth by metes and bounds as follows * * * *except the lands overlapped by the* * * * *Mesita de Juana Lopez gran*[*t*]") (emphasis added). The statement does not purport to evaluate the validity of the Mesita de Juana Lopez grant vis-a-vis the Pueblo's prior grant. Furthermore, no judicial decree quieting title to non-Indian claimants under the Mesita de Juana Lopez grant was ever entered; the report does not purport to identify any existing owner of the land, because no claimant under the Mesita de Juana Lopez grant filed a claim with the Board; and no plat or field notes purporting to extinguish the Pueblo's interest in the overlap lands were ever filed. Moreover, even if the claimant had appeared, it is clear from Section 14 of the Act that the claimant would have failed in any effort to divest the Pueblo of title under the Act, whatever the merits of the claim based on the overlapping grant. It is inconceivable that Congress intended such a process, without completion of the Act's explicit procedures, to bar an action by the United States or the Pueblo to quiet title to the land. *A fortiori*, the Pueblo's title to the land could not be extinguished in such a manner.

3. The Pueblo Lands Act directly affects only the Pueblos of New Mexico; as a result, the issues presented by this case are not as broad-based as others in which this Court grants plenary review. We nevertheless believe that certiorari is warranted. First, the court of appeals' decision is flatly inconsistent with *Candelaria* (which specifically involved

the Pueblo Indians) and with numerous other rulings of this Court that the United States is not barred by a statute of limitations in the absence of a statute expressly so providing. The decision therefore raises broader questions involving actions by the United States in its sovereign capacity to protect Indian land titles, as well as in cases in which it might be contended that a general statute of limitations bars an action by the United States. Second, this Court recognized the importance of Pueblo land claims in granting review several years ago in an earlier case involving questions arising under the Pueblo Lands Act. See *Mountain States*, *supra*.

Third, the case is tremendously important to the Pueblo of Santo Domingo, involving 24,000 acres of land the Pueblo has held since before the arrival of Europeans; that was granted to it by the King of Spain in 1689; and that was confirmed to it by an Act of Congress promptly after the United States acquired the region under the Treaty of Guadalupe Hidalgo. Moreover, it is undisputed by the parties and the courts below that the grant to the Pueblo is prior in time to that of respondents' predecessors-in-interest, and it is clear that the Pueblo Lands Act expressly did not allow extinguishment of Indian title to overlapping grants even where the non-Indian's claim was superior. In light of the "distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people," *United States* v. *Mitchell*, 463 U.S. 206, 225 (1983) (quoting *Seminole Nation* v. *United States*, 316 U.S. 286, 296 (1942)), the United States Government has a strong duty in ensuring that justice is done to the Indians in its courts, which weighs heavily in favor of plenary review.

Fourth, it would be in the public interest for the Court to grant review and reverse the erroneous ruling below, because although the court of appeals found the quiet title action to be time-barred, it did not quiet title in the respondents or expressly state that the Pueblo's title has been extinguished. Compare *Block* v. *North Dakota*, 461 U.S. at 291-292. As a result, although the decision below was premised on a perceived need for finality, it does not accomplish that result. Only by allowing this suit to proceed can the uncertainty be resolved.

The United States did not lightly bring this action in the district court. Nor has the United States frequently requested this Court to review the correctness of the disposition by the lower courts of Indian land claims.[13] But we are convinced that the decision below rests on fundamental errors that substantially harm the Pueblo of Santo Domingo; accordingly, we are persuaded that this case presents an appropriate occasion for this Court's review.

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[13] The Court has, however, granted several petitions filed by non-Indians in such cases in recent years. See, *e.g.*, *Mountain States*, *supra*; *Oneida II*, *supra*; and *South Carolina* v. *Catawba Tribe*, 476 U.S. 498 (1986).

CONCLUSION

The petition for a writ of certiorari should be granted.[14]

Respectfully submitted.

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FEBRUARY 1992

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[14] The Pueblo's petition from the judgment challenged in this petition is currently pending before the Court in *Pueblo of Santo Domingo* v. *Thompson*, No. 91-1179, petition for cert. filed (Jan. 21, 1992). To ensure a full presentation of all the parties' interests, we suggest that the Court grant that petition as well and consolidate the two cases for consideration.

APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Nos. 89-2077, 89-2091, 89-2142

UNITED STATES OF AMERICA, on its own behalf and on behalf of THE PUEBLO OF SANTO DOMINGO,
PLAINTIFF-COUNTER-DEFENDANT/APPELLANT,

and

THE PUEBLO OF SANTO DOMINGO,
PLAINTIFF-INTERVENOR,

v.

LELAND THOMPSON, JR., ET AL.,
DEFENDANTS-APPELLEES.

Appeal from the United States District Court
for the District of New Mexico
(D.C. No. CV-84-0314JC)

[Filed Aug. 12, 1991]

Before LOGAN, ANDERSON, and EBEL, Circuit Judges.

LOGAN, Circuit Judge.

Plaintiffs, the Pueblo of Santo Domingo and the United States, as trustee for the Pueblo, brought this suit to quiet title to approximately 24,000 acres of land in New Mexico that were part of a seventeenth century Spanish land grant to the Pueblo. Defendants are non-Indian claimants to the land under a subsequent Spanish grant. The district court entered summary judgment for defendants, finding that the Pueblo Lands Act of June 7, 1924, ch. 331, 43 Stat. 636, as amended by Act of May 31, 1933, ch. 45, 48 Stat. 108, created a statute of limitations that now bars this action. *United States v. Thompson*, 708 F. Supp. 1206 (D.N.M. 1989). Plaintiffs appeal.

I

The Pueblo trace their title to the land from a 1689 grant by Spain, which was confirmed by Congress in 1858 and patented in 1864. Defendants trace their title from a 1782 grant known as the Mesita de Juana Lopez Grant, which Congress confirmed in 1879. Approximately 24,000 acres are overlapped by both grants and are referred to as "the overlap land."

In response to uncertainty over the titles to Pueblo land,[1] Congress passed the Pueblo Lands Act of June

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[1] In *United States v. Joseph*, 94 U.S. 614 (1877), the Supreme Court held that the Pueblo Indians were not "Indian tribes" within the meaning of the Nonintercourse Act and therefore were not prohibited from alienating their land. Relying on *Joseph* 3,000 non-Indians acquired putative title to Pueblo land. *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 243 (1985). In 1913 the Supreme Court held that congressional prohibitions on the introduction of liquor into Indian lands included the Pueblo. *United States v. Sandoval*, 231 U.S. 28 (1913). In discrediting *Joseph*, the *Sandoval* Court cast doubt on the ability of the Pueblo to

7, 1924 (PLA), ch. 331, 43 Stat. 636. The PLA established the Pueblo Lands Board (Board) to examine and resolve non-Indian claims to Pueblo lands. Section 2 directed the Board to issue a report describing "any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act . . . ." *Id.* § 2, 43 Stat. at 636. The Board was to examine the claims of non-Indians and extinguish Pueblo title only when it determined that the non-Indians had met certain adverse possession and tax payment requirements of § 4. *Id.* §§ 2 & 4, 43 Stat. at 636-37.

Once the § 2 report was issued, the Attorney General was to bring a quiet title action in United States district court for all lands described in the report for which the Board had determined Pueblo title was not extinguished. *Id.* §§ 1 & 3, 43 Stat. at 636-37. Any non-Indian whose claims the Board had not accepted could raise an adverse possession defense before the district court, and the court could extinguish Pueblo title if it found that the claimant had met the § 4 adverse possession criteria. In addition, the Pueblo could sue to assert their property rights under an

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alienate their lands and therefore on the validity of the titles acquired by non-Indians. *See Mountain States*, 472 U.S. at 243. The Court did not resolve the uncertainty until 1926, *United States v. Candelaria*, 271 U.S. 432, 441-42 (1926) (expressly holding that the Nonintercourse Act applied to the Pueblo Indians). During the interim Congress passed the Pueblo Lands Act. Pueblo Lands Act of June 7, 1924, ch. 331, 43 Stat. 636.

independent suit provision of § 4. *Id.* § 4, 43 Stat. at 637.

Section 13 required the Secretary of Interior (Secretary) to file plats and field notes for the lands to which Pueblo title had been extinguished, thereby vesting title in the non-Indian claimants. *Id.* § 13, 43 Stat. at 640. The Secretary could not file the plats and field notes until at least two years had passed from the filing of the Board's § 2 report. *Id.*

In § 14, Congress attempted to settle title to lands with overlapping Spanish grants. Section 14 contemplated that the Pueblo would retain title to and possession of all overlap land, even if a non-Indian claimant had superior title. *See id.* § 14, 43 Stat. at 641. Congress then would consider compensating the non-Indian claimant. *See id.*

As the district court stated, "[a]t issue in this case is the Board's § 2 report on the Pueblo of Santo Domingo." *Thompson*, 708 F. Supp. at 1210. The report stated that

> "having investigated the lands within the exterior boundaries of the land . . . confirmed to the Pueblo of Santo Domingo as shown on blue print map hereto attached and marked 'Exhibit A', being a Spanish Grant . . . , [the Board] has determined, and hereby determines, *that title thereto in said Pueblo has not been extinguished* in accordance with the provisions of said Act of June 7, 1924, as to the lands described and set forth by metes and bounds as follows, except certain tracts marked 'Exceptions 1 to 36', inclusive, and indicated on blue print map hereto attached and marked 'Exhibit B', and *except the lands over-lapped by the La Majada, Sitio de Juna Lopez and Mesita de Juane Lopez grants*

> shown on blue print map hereto attached and marked 'Exhibit A', ..."

Pueblo Lands Board, Santo Domingo Pueblo, Report on Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished 1-2 (Dec. 29, 1927), IV Addendum of Exhibits, Ex. E-1 (emphasis added). No claims by non-Indians were presented to the Board for the overlap land, although it appears that Exceptions 1 to 36 were based on non-Indian claims.

The United States, pursuant to § 3 of the PLA, filed a quiet title action on behalf of the Pueblo but expressly excluded the overlap land. The quiet title complaint asserted that the Board had "determined that the Indian title to certain portions [including the overlap land] of the patented land hereinabove described has been extinguished, and that title to said portions now vests in various owners other than said Pueblo and said Indians . . . and no relief is here asked as to the land included therein." Government's Bill of Complaint in *United States* v. *Montoya*, No. 1830 Equity (D.N.M. 1929), IV Addendum of Exhibits, Ex. E-6 at 5; *see also* Stipulation of the Parties, R. tab 766 at 6, ¶ 9. Plats and field notes were filed for the specific parcels for which non-Indians had presented claims (i.e., Exceptions 1 to 36), but there is no evidence that plats and field notes were ever filed for the overlap land.[2] The instant action was not filed until March 9, 1984.

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[2] The district court stated that the plats and field notes were filed in 1930. *Thompson*, 708 F. Supp. at 1210 n.6. The court, however, cited Defendants' Exhibits E-8 to E-12, which are the plats and field notes for Exceptions 1 to 36. *See id.*; IV Addendum of Exhibits, Exs. E-8 to E-12. The parties have stipulated that there is no evidence that plats or field notes were

On appeal, plaintiffs' contentions can be grouped into four general alternative arguments, as follows: (1) the § 4 independent suit provision does not contain a statute of limitations; (2) even if § 4 does include a statute of limitations, Congress did not intend it to apply to the overlap land; (3) no statute of limitations can operate against the federal government without its express consent and, therefore, the government may maintain this action even if the Pueblo cannot; and (4) the statute of limitations does not run until the plats and field notes are filed, a condition that has not been satisfied with respect to the overlap land.

There are no disputed material facts. We review the district court's application of law de novo. *See Osgood v. State Farm Mut. Auto. Ins. Co.*, 848 F.2d 141, 143 (10th Cir. 1988).

II

We first consider whether the PLA § 4 independent suit provision contains a statute of limitations. " 'The starting point in every case involving construction of a statute is the language itself.' " *International Bhd. of Teamsters v. Daniels*, 439 U.S. 551, 558 (1979) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring)). "When the terms of the statute are clear and unambiguous, that language is controlling absent rare and exceptional circumstances." *Wilson v. Stocker*, 819 F.2d 943, 948 (10th Cir. 1987). The relevant portion of § 4 is its independent suit provision:

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ever filed for the overlap land. Stipulation of the Parties, R. tab 766 at 5, ¶ 5. We therefore assume that the district court's statement referred only to the specific parcels listed in Exceptions 1 to 36.

> "Nothing in this Act contained shall be construed to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction and any such right may be asserted at any time prior to the filing of the field notes and plats as provided by section 13 hereof, ..."

PLA § 4, 43 Stat. at 637.

That section authorized the Pueblo to sue on their own behalf to protect their title. Defendants argue that it also established a time limit after which the Pueblo could no longer challenge the Board's extinguishment of their title. Plaintiffs disagree, contending that the section provided a "grace period" during which the Pueblo could sue as if the PLA had never been enacted and after which the Pueblo could sue at any time but subject to the PLA. The district court found that the meaning of independent suit provision "cannot be determined from the plain language of the statute. Without resort to the legislative history, [it] is susceptible to the meanings ascribed it both by plaintiffs and by defendants." *Thompson*, 708 F. Supp. at 1212. We agree that the statutory language is ambiguous on its face as applied to the statute of limitations issue before us.

Plaintiffs argue that ambiguous statutory language must be construed in favor of the Indians. The district court, citing *Mountain States Tel. & Tel. Co. v. Santa Ana*, 472 U.S. 237 (1985), rejected this canon of statutory construction. *Thompson*, 708 F. Supp. at 1212 n.7. Instead, the court examined the PLA's

legislative history and overall structure, and determined that Congress intended to create a statute of limitations on Pueblo claims. *Id.* at 1214-15. Plaintiffs contend that the court applied the wrong canon of statutory construction.

We need not decide whether the district court correctly read *Mountain States*, because even under plaintiffs' theory, the court may consider legislative history in determining the meaning of statutory language that is ambiguous on its face. The cases cited by plaintiffs stand for the proposition that when congressional intent with respect to an Indian statute is unclear, courts will presume that Congress intended to protect, rather than diminish, Indian rights. Reference to the legislative history, however, often will resolve uncertainties about the intent of Congress. *See Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 177-78 (1989) (applying canon that federal statutory ambiguities are to be resolved in favor of tribal independence, Court considered both statute's language and legislative history to determine congressional intent); *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766-67 (1985) (construing statute liberally in favor of Indians, Court examined both text and legislative history to ascertain congressional intent); *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 247-48 (1985) (proper inquiry is whether congressional intent is plain and unambiguous); *Antoine v. Washington*, 420 U.S. 194, 199-200, 205 (1975) (liberal construction in favor of Indians did not preclude search for congressional purpose in statutes themselves or their legislative history); *DeCoteau v. District County Court*, 420 U.S. 425, 444-45 (1975) (although clear congressional intent is required to terminate Indian reservation, such intent

may be clear from surrounding circumstances and legislative history); *EEOC v. Cherokee Nation*, 871 F.2d 937, 939 (10th Cir. 1989) (court is to apply special canons of construction in favor of Indians when there is no clear indication of congressional intent, as manifested by legislative history or comprehensive statutory plan).

The PLA's legislative history reveals that Congress intended a statute of limitations to apply to suits by the Pueblo challenging extinguishment of their title. The Senate report on the bill that was enacted as the PLA stated that the legislation would "provide for the *final* adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claimed by the Pueblo Indians of New Mexico." S. Rep. No. 492, 68th Cong., 1st Sess. 3 (1924), III Addendum of Exhibits, Ex. A-4 (emphasis added). *See also Mountain States*, 472 U.S. at 240. The report referred several times to the need to resolve the disputes over Pueblo land that had created havoc in New Mexico. *See* S. Rep. No. 492 at 5, 11. The House report adopted the Senate report and incorporated it therein. *See* H.R. Rep. No. 787, 68th Cong., 1st Sess. (1924), III Addendum of Exhibits, Ex. A-3.

Not every mention of "limitations" or "statute of limitations" in House and Senate reports or in hearings and debates referenced a time limit on the Pueblo's right to bring independent suits. On careful reading, it appears that members of Congress often used those terms to refer to the period of adverse possession by non-Indian claimants that would defeat Pueblo title under § 4. Nevertheless, members of Congress repeatedly expressed concern throughout the hearings and debate that these complicated title

disputes reach a final resolution. *See Pueblo Indian Lands, Hearings on S. 3865 and S. 4223 Before the Senate Comm. on Public Lands and Surveys*, 67th Cong., 4th Sess. 66 (1923) (question of Sen. Jones) (hereinafter "*Senate Hearings*"), I Addendum of Exhibits, Ex. LCK 7 at 68; *id.* at 102, Ex. LCK 7 at 96 (statement of Sen. Bursum); *id.* at 103, Ex. LCK 7 at 96 (exchange between Sen. Jones and Charles H. Burke, Commissioner of Indian Affairs); *id.* at 104, Ex. LCK 7 at 97 (exchange between Sen. Lenroot and Col. Ralph E. Twitchell, Special Assistant to the Attorney General); *Pueblo Indian Land Titles: Hearings on H.R. 13452 and H.R. 13674 Before the House Comm. on Indian Affairs*, 67th Cong., 4th Sess. 14, 64 (1923) (statements of Rep. Gensman) (hereinafter "*House Hearings*"), II Addendum of Exhibits, Ex. LCK 8 at 195, 220; *id.* at 22, 71, Ex. LCK 8 at 199, 223 (statements of Rep. Snyder); *id.* at 40, 56, 265, Ex. LCK 8 at 208, 216, 320 (statements of Rep. Roach); *id.* at 150, Ex. LCK 8 at 263 (exchange between Rep. Leatherwood and Col. Twitchell). *See also Senate Hearings* at 10, Ex. LCK 7 at 50 (testimony of Commissioner Burke). We find no evidence anywhere to support plaintiffs' reading of the statute.

A memorandum by A.A. Berle, Jr., a prominent New York attorney and advocate for the Pueblo who was involved in negotiations over the PLA, further reveals the prevalent thinking among those who negotiated the version of the legislation that was enacted. Berle wrote, "After such filing [of the plats and field notes], the title of the non-Indian claimants becomes absolute. This is because in common justice, the non-Indian settlers on these lands should either be thrown out or have their titles confirmed. The In-

dians should not be permitted to keep their claims alive for an indefinite period but should assert them now or, if they do not care to do this, should accept compensation." Memorandum, Pending Pueblo Land Legislation 4 (Feb. 14, 1924), II Addendum of Exhibits, Ex. LCK 19 at 465. Francis C. Wilson, another attorney and Pueblo advocate, perceived the legislation similarly. *See House Hearings* at 346, Ex. LCK 8 at 361 (statement of Francis C. Wilson).

If we had doubts concerning applying a limitations period to the Pueblo, it was erased by the subsequent amendment of the PLA. In 1933 Congress amended the PLA to authorize settlement of suits brought by various Pueblos and to increase the amount of federal compensation paid to the Pueblo for extinguishing title to portions of their lands. Act of May 31, 1933, ch. 45, 48 Stat. 108. The amendment authorized the Secretary to offer the Pueblo additional compensation if they would abandon pending or contemplated lawsuits. The Pueblo either could accept this offer by notifying the Secretary in writing, *see id.* § 6, 48 Stat. at 110-11, or

> "if said election by said pueblo be not made, said pueblo shall have one year from the date of the approval of this Act within which to file any independent suit authorized under section 4 of the Act of June 7, 1924, at the expiration of which period the right to file such suit shall expire by limitation."

Id. § 6, 48 Stat. at 111. Congress thus substituted a specific date of repose (i.e., one year from the enactment of the 1933 Act) for a statute of limitations that had been tied to the filing of plats and field notes. In doing so, it reaffirmed its intent that "liti-

gations and pending and potential litigations, affecting the ownership of these Pueblo lands, will be forever ended." S. Rep. No. 73, 73d Cong., 1st Sess. 17 (1933) (letter from Secretary of Interior to Chairman of the Senate Committee on Indian Affairs, expressly incorporated in Senate report), III Addendum of Exhibits, Ex. B-4.

Statutes of limitations are enacted because,

> "in the judgment of most legislatures and courts, there comes a point at which the delay of a plaintiff in asserting a claim is sufficiently likely either to impair the accuracy of the fact-finding process or to upset settled expectations that a substantive claim will be barred without respect to whether it is meritorious."

Board of Regents v. Tomanio, 446 U.S. 478, 487 (1980). Congress was concerned about the uncertainty of both Pueblo and non-Indian rights created by the unsettled land disputes. Additionally, complicated title questions would only become more obfuscated with time. In light of the overwhelming evidence of congressional intent to reach a final resolution of these issues, we agree with the district court that § 4 of the PLA, as amended in 1933, contains a statute of limitations. *See Pueblo of Santa Ana v. Baca*, 844 F.2d 708, 709 n.1 (10th Cir. 1988).

III

Next we consider whether the statute of limitations applies to the overlap lands, which we regard as the most difficult issue in this case. We note at the outset that the parties do not dispute the meaning of § 14 of the PLA. Section 14 provided

> "if any non-Indian party to any such suit shall assert against the Indian title a claim based upon a Spanish or Mexican grant, and if the court should finally find that such claim by the non-Indian is superior to that of the Indian claim, no final decree or judgment of ouster of the said Indians shall be entered or writ of possession or assistance shall be allowed against said Indians, or any of them, or against the United States of America acting in their behalf. In such case the court shall ascertain the area and value of the land thus held by any non-Indian claimant under such superior title, ... When such finding adverse to the Indian claim has become final, the Secretary of the Interior shall report to Congress the facts, including the area and value of the land so adjudged against the Indian claim, with his recommendations in the premises."

PLA § 14, 43 Stat. at 641. The section plainly meant that "Congress intended that the Pueblo Indians retain title to all overlap lands, even when the non-Indian claimants under the grants had superior title." *Thompson*, 708 F. Supp. at 1213. In extinguishing Pueblo title to the overlap land, the Board ignored an express congressional directive. Moreover, "no claims pursuant to the adverse possession criteria of § 4 were ever presented to the Board by or on behalf of non-Indian claimants to the overlap lands." *Id.* at 1211 (citing Stipulation of the Parties, R. tab 766 at 4, ¶ 3). The issue here, however, is not whether the Board's actions could withstand legal challenge, but whether that challenge could be brought in the form of a quiet title action in 1984.

Plaintiffs argue that the Board had no authority to extinguish Pueblo title to the overlap land. They

assert, in effect, that the provisions of PLA § 14 vest title in the Pueblo in the overlap land, and that the Board's action, finding the title to be vested in others, is void. We disagree. Section 2 of the PLA provided,

> "It shall be the duty of said board to investigate, determine, and report and set forth by metes and bounds, illustrated where necessary by field notes and plats, the lands within the exterior boundaries of *any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America*, by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act . . . ."

PLA § 2, 43 Stat. at 636 (emphasis added). Under the broad authority granted by Congress, the Board could determine Pueblo title to any land, including overlap land, granted or confirmed by any authority of the United States, including Congress. The United States, once the Board determined title, was to bring suit to have a court confirm or reject the Board's findings. *Id.* § 3. This the United States did, and although the Board's actions as to the overlap land were contrary to the intent, indeed the specific mandate, of Congress we hold that it was within its jurisdiction to do so.

We do not believe that the admonition in § 14 directing the Board to give title to overlap land to the Pueblo can be treated as jurisdictional in the same sense as the § 2 grant of the Board's power to determine ownership. Thus, the Board's actions were "voidable" rather than "void" when it acted contrary to § 14's direction. Only void judgments are subject to collateral attack. The plain language of the statute

puts the overlap land within the Board's jurisdiction, and challenges to the legality of Board actions had to be brought within the statutory time limit.[3] When the scheme established by Congress is clear from the statute's language and legislative history, the courts cannot intervene to remedy unintended consequences.[4]

IV

Plaintiffs also argue that the PLA's statute of limitations cannot operate against the federal government. They cite several cases for the proposition "that the United States, asserting rights vested in

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[3] Our language in *Baca*, 844 F.2d at 709 n.1, is not to the contrary. In *Baca*, we recognized that § 4 provided a statute of limitations but determined that the PLA did not apply when the Pueblo had no notice of possible non-Indian claims until after the statute had run. *Id.* We agree with the district court that here "the Pueblo did have notice that the Board was attempting to extinguish title to the overlap land. Notice was evident in the Board's § 2 report; the § 3 quiet title action, the complaint to which was based on the Board's § 2 report; and the Board's § 6 report which listed the Pueblo's acreage as tens of thousands of acres less than it would have been had the overlap acreage been included." *Thompson*, 708 F. Supp. at 1215 n.11.

[4] We are not impressed by plaintiffs' arguments about the alleged failure to include the overlap land in the § 3 quiet title action. In one sense the government did include the overlap land, by disclaiming any title in the Pueblo; having made that determination it had no duty to seek a court judgment of which non-Indians owned what interests in the land. The same is true of the failure to file plats and field notes under § 13. The Board was not concerned with adjudicating possible disputes among non-Indian owners of tracts in which the Pueblo claimed no ownership, and so it is not surprising that the Secretary did not file a plat delineating the ownership of that land.

them as a sovereign government, are not bound by any statute of limitations unless Congress has clearly manifested its intention that they should be so bound." *United States v. Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U.S. 120, 125 (1886). *See also United States v. Frank B. Killian Co.*, 269 F.2d 491, 494 (6th Cir. 1959); *Illinois Central R.R. Co. v. Rogers*, 253 F.2d 349, 352 (D.C. Cir. 1958). They also note that 28 U.S.C. § 2415(c) does not provide any statute of limitations against the federal government for actions to establish title to real property.

In the instant case the federal government is suing as trustee for the Pueblo, to assert Pueblo title to the overlap land, not to assert its own title. The government therefore stands in the shoes of the Pueblo and must be bound by the clear import of the PLA's specific provisions. We do not have here an attempt to apply a state statute of limitations against the federal sovereign. Instead, Congress itself imposed a time bar on assertions of Pueblo title to land for which Pueblo title had been extinguished. The purpose of Congress would be frustrated if we allowed the federal government to bring the instant suit on behalf of the Pueblo. The statute of limitations would be meaningless. Congress intended the federal government, in a case like this, to be subject to the same statute of repose that operates against the Pueblo.

V

Finally, we consider plaintiffs' contention that the statute of limitations has not run. They rely on the language of § 4 of the PLA, as enacted in 1924, and the fact that no plats or field notes have been filed for the overlap land.

As discussed in Part II above, the 1933 Act amending the PLA substituted a more definite statute of limitations for the less certain provisions of the original statute. The plain language of the 1933 Act provided that unless the Pueblo entered into an agreement with the Secretary to abandon pending or contemplated § 4 suits in exchange for additional compensation, the right to bring any § 4 suit challenging the extinguishment of Pueblo title would expire one year following the statute's enactment. *See* Act of May 31, 1933, ch. 45, § 6, 48 Stat. 108, 111. Plaintiffs argue that Congress intended the 1933 Act to apply only to certain lands in dispute at the time, not to the overlap land in question here. We see nothing on the face of the act's language limiting the new statute of limitations to any particular land. The language is both broadly worded and clear, and we will not reach into the more speculative legislative history to construe it otherwise. *Wilson*, 819 F.2d at 948. Thus, the statute of limitations ran on May 31, 1934.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

No. CIV 84-0314 JC

UNITED STATES OF AMERICA,
on its own behalf and on behalf of the
PUEBLO OF SANTO DOMINGO,
Plaintiff, and

THE PUEBLO OF SANTO DOMINGO,
Plaintiff-Intervenor,

vs.

LELAND THOMPSON, JR., *et al.*,
Defendants.

MEMORANDUM OPINION

THIS MATTER came on for consideration of the Alexandre Defendants' Motion for Summary Judgment, filed February 13, 1987;[1] Plaintiffs' Cross-Motion for Summary Judgment, filed April 1, 1987; and Defendants' Joint Motion in Limine, or Alternatively, Motion to Strike, filed June 1, 1987. The

[1] Various defendants filed motions for summary judgment. These defendants also joined in one another's summary judgment motions. As the Court's ruling on the Alexandre defendants' motion is dispositive of the claims of all the defendants, the Court need not consider the other defense motions for summary judgment.

Court has reviewed the motions and memoranda submited by the parties and heard the oral argument of counsel on September 8, 1988. Being otherwise fully advised in the premises, the Court finds that the defendants' Motion for Summary Judgment is well-taken and will be *granted* and that the defendants' Motion In Limine is not well-taken and will be *denied.*

I. Background Facts

A. Alienability of Pueblo Indian Land

Plaintiffs filed this action for quiet title and declaratory judgment on March 9, 1984 alleging that defendants' claim title to and are in possession of certain "overlap" land which belongs to the Pueblo of Santo Domingo by virtue of a seventeenth-century Spanish land grant and subsequent confirmation and patenting of the land by the United States. The area of the overlap land is approximately 24,000 acres. It is located between Albuquerque and Santa Fe, New Mexico. The land in question is referred to as "overlap" land because it is also alleged to be part of the Mesita De Juana Lopez Grant (MDJL). This grant was confirmed on January 28, 1879 by the United States Congress. It was never patented.

When the Territory of New Mexico was ceded to the United States under the Treaty of Guadalupe Hidalgo in 1848,[2] the United States determined to give all former Mexican citizens the same rights to the enjoyment of their property that they had enjoyed under the previous sovereign. Under Mexican sovereignty, the Pueblo Indians had been able to freely

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[2] Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, 9 Stat. 922.

alienate their land. This was in distinct contrast to Indians living under American sovereignty, who were prevented from freely alienating their land by the Nonintercourse Act. 4 Stat. 730, 25 U.S.C. § 177. Between 1848 and 1912, when New Mexico became a state,[3] residents of the New Mexico territory believed that the Pueblo Indians had the same unrestricted ability to alienate their lands as non-Indians whose titles originated in Spanish grants. This was confirmed by judicial decisions in the territorial courts of New Mexico and the Supreme Court's holding in *United States v. Joseph*, 94 U.S. 614 (1877).

Because of their "advanced development" and previous history as Mexican citizens, the *Joseph* court held that the Pueblo Indians of New Mexico were not "Indian tribes" within the meaning of the Nonintercourse Act and thus were not protected by that Act's restraints on the alienation of land belonging to Indian tribes. As a result of this holding, several thousand non-Indians acquired putative ownership to parcels of land located within the boundaries of the Pueblo land grants.

The status of these individuals' titles was thrown into doubt in 1913 by a Supreme Court decision which repudiated the notion that Pueblo Indians were not subject to federal laws. In *United States v. Sandoval*, 231 U.S. 28 (1913), the Supreme Court rejected the factual premise which had supported its holding in *Joseph* and found that the dependent status of the Pueblo Indians was such that Congress could prohibit

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[3] The Supreme Court stated that New Mexico was granted statehood in 1910. *See Mountain States Tel. & Tel. Co. v. Santa Ana*, 472 U.S. 237, 240 (1985). In fact, it was not until 1912 that New Mexico was officially granted statehood.

the introduction of intoxicating liquors into Pueblo lands.[4]

It was not until 1926 that the Supreme Court expressly held that the Nonintercourse Act applied to the Pueblo Indians. *See United States v. Candelaria*, 271 U.S. 432, 441-442 (1926). But Congress did not wait for the Supreme Court to so hold. Instead, it responded to the turmoil created by the implications of the *Joseph* decision by passing legislation designed to finally settle the complicated title questions involving Pueblo land. This legislation was the Pueblo Lands Act (PLA). It was signed into law in 1924 and controls the outcome of this lawsuit. See Pueblo Lands Act of June 7, 1924, 43 Stat. 636, as amended by Act of May 31, 1933, 48 Stat. 111, (25 U.S.C.A. § 331, note), reprinted as Appendix A to this opinion.

B. The Pueblo Lands Act

As noted by the Tenth Circuit and the Supreme Court,[5] the PLA established a Pueblo Lands Board (Board) to examine non-Indian claims to Pueblo lands. Under the Act, the Board could extinguish title to Indian lands only if the non-Indian claimants had "[c]ontinuous, open, and notorious adverse possession . . . coupled with the payment of taxes from 1889 to the date of enactment [of the PLA] in 1924, or from 1902 to 1924 if possession was under color of

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[4] The preceding three paragraphs paraphrase the Supreme Court's history of the effect of American sovereignty on the Pueblo Indians' rights to alienate their lands. *See Mountain States*, 472 U.S. at 240-244.

[5] See *United States v. Trujillo*, 853 F.2d 800 (10th Cir. 1988) and *Mountain States Tel. & Tel. Co. v. Santa Ana*, 472 U.S. 237 (1985).

title." *Mountain States Tel. & Tel. Co. v. Santa Ana*, 472 U.S. 237, 244 (quoting § 2, 43 Stat. 636). Under § 2 of the PLA, it was the duty of the Board to submit a report which determined which lands within the original Pueblo land grant still belonged to the Pueblos. The Board's § 2 report then became the basis for a quiet title action brought by the United States in federal district court to quiet title in the remaining land to the Pueblo. §§ 1, 3. Even if the Board did not accept the non-Indian claimants' adverse possession defense, these claimants had another bite at the apple—they could again raise the § 4 adverse possession defense before the district court in the quiet title action. If the district court found that the § 4 adverse possession criteria had been met, Indian title to that land would be extinguished.

If land originally included in a Pueblo's grant was not included in the Board's § 2 report, it was presumed that the Board had unanimously determined that the Indian title to such land had been extinguished. Title to these lands did not vest in the non-Indian claimants until the Secretary of the Interior had filed field notes and plats for each pueblo showing the lands "to which Indian title ha[d] been extinguished." § 13. The Secretary could not file such notes and plats until at least two years had passed from the issuance of the Board's § 2 report. § 13.[6]

At issue in this case is the Board's § 2 report on the Pueblo of Santo Domingo. It stated that the Board

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[6] The plats and field notes for the Pueblo of Santo Domingo were based on the Board's § 2 report and the quiet title action in *United States v. Montoya*, No. 1830 Equity, D.N.M., April 25, 1929. They were filed in 1930. See Defendants' Exhibits E-8 to E-12 in Support of Their Motion for Summary Judgment.

> having investigated the lands within the exterior boundaries of the land . . . confirmed to the Pueblo of Santo Domingo as shown on blue print map hereto attached and marked "Exhibit A", being a Spanish Grant as confirmed by the Act of Congress approved December 1, 1858, and patented November 1, 1864, the exterior boundaries of said grant having been corrected by a resurvey made in 1907, has determined, and hereby determines, *that title thereto in said Pueblo has not been extinguished* in accordance with the provisions of said Act on June 7, 1924, as to the lands described and set forth by metes and bounds as follows, except certain tracts marked "Exceptions 1 to 36", inclusive, and indicated on the blue print map hereto attached and marked "Exhibit B", and *except the lands over-lapped by the La Majada, Sitio de Juana Lopez and Mesita de Juana Lopez grants shown on blue print map hereto attached and marked "Exhibit A"*, . . .

Pueblo Lands Board, Santo Domingo Pueblo, Report on Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished (Report No. 1) (December 29, 1927), Defendants' Ex. E-1 in Support of Their Motion for Summary Judgment (emphasis added).

Defendants argue that this language extinguished the Pueblo's title to the overlap land which is the subject of this lawsuit and that the legal challenge to the Board's finding that the plaintiffs now bring is barred by the statute of limitations provision of §§ 4 and 13 of the PLA. Defendants also advance several alternative theories. None of these need be addressed by the Court as it finds as a matter of law

that the claim plaintiffs now bring is one encompassed by the independent suit provision of § 4 of the PLA, upon which the statute of limitations has run. Before explaining its holding, the Court will address defendants' Joint Motion in Limine or Alternatively, Motion to Strike.

II. Motion in Limine

Defendants ask this Court to strike the affidavits of plaintiffs' expert historical witnesses. The only affidavit relevant to this court's holding is that of Lawrence C. Kelly. Accordingly, defendants' motion will be considered only as it extends to Mr. Kelly's affidavit and supporting documents.

Defendants' principal argument is that the affidavit violates Fed. R. Evid. 702 and 703 because it is unreasonable for Mr. Kelly to rely on the inadmissible information in the documents which support his opinions. The defendants unwisely rely on *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 505 F. Supp. 1125 (E.D. Pa. 1980) in arguing that it is for the Court, not the expert, to determine whether the material relied upon by the proffered expert, is "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject . . . ." Fed. R. Evid. 703. Almost six months prior to the filing of defendants' Memorandum in Support of its Motion In Limine, the district court in *Zenith* was reversed on precisely the issue highlighted by defendants. *See In re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 238, 275-284 (3rd Cir. 1983), *rev'd. on other grounds sub nom. Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). *In re Japanese Electronic Products Antitrust Litigation* was cited

with approval in *Marsee v. United States Tobacco Co.*, No. 86-2094, (10th Cir. Jan. 10, 1989). *See also Ponder v. Warren Tool Corp.*, 834 F.2d 1553, 1556-57 (10th Cir. 1987).

The defendants also argue that Mr. Kelly's affidavit should be stricken because it goes to the ultimate issues. One need only read Fed. R. Evid. 704 to dismiss this argument. Moreover, the Court can admit opinion testimony of experts if it "will assist the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702. In a case as historically complex as the one presently before it, the Court is at a loss to see how an adequate decision could be reached without expert historical testimony.

Finally, defendants argue that Mr. Kelly's affidavit should be stricken because it is contrary to Fed. R. Evid. 1006, 1002, 802 and Fed. R. Civ. P. 56(e). The Court finds that these arguments are without merit. Accordingly, the defendants' Joint Motion In Limine will be denied, and the Court will consider the affidavit of Mr. Kelly and supporting documents.

III. Summary Judgment and the Pueblo Lands Act

A motion for summary judgment can only be granted when the record discloses that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). *See also Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In addition to cross-motions for summary judgment, the parties have stipulated to the material facts which are not in dispute. *See* Stipulation of the Parties as to Material Facts Not in Dispute, filed June 24, 1988. It is on the basis of these stipulated facts that the Court holds in favor of the defendants on their summary judgment motion.

A. Application of the PLA to the Facts Before the Court

As noted above, the parties' fundamental dispute concerns the meaning and effect of the language in the Board's § 2 report which purports to extinguish the Pueblo of Santo Domingo's title to all land overlapped by the Mesita de Juana Lopez Land Grant. The parties agree that there is no documentation to refute the conclusion that no claims pursuant to the adverse possession criteria of § 4 were ever presented to the Board by or on behalf of non-Indian claimants to the overlap lands. Stipulation, p. 4, para. no. 3.

Thus, the Court is faced with a situation where the Board allegedly extinguished title to approximately 24,000 acres of overlap land without having followed the PLA's mandate that title to Indian lands only be extinguished when non-Indian claimants satisfied the specific adverse possession criteria of § 4. In order to determine whether or not the Board's action can today bind the plaintiffs, the Court must engage in a thorough analysis of the PLA.

Although an analysis of any statute begins with the language of the statute, *Wilson v. Stocker*, 819 F.2d 943 (10th Cir. 1987), the Court may look beyond the words of the statute to ascertain its purpose if the statute contains an ambiguity, *Ewing v. Rodgers*, 826 F.2d 967 (10th Cir. 1987), and draw inferences from the congressional record if the statute leaves open a question of legislative intent. *Jones v. Intermountain Power Project*, 794 F.2d 546 (10th Cir. 1986). It is the Court's duty to " 'find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested.' " *Comm'r v. Engle*,

464 U.S. 206, 217 (quoting *NLRB v. Lion Oil Co.*, 352 U.S. 282, 297 (1957)). More specifically, the PLA should be interpreted so that all its sections are operative and each section is harmonized with the structure of the entire act and its contemporary legal context. *Mountain States*, 472 U.S. at 249, 252.[7]

The Court finds that the PLA contains ambiguous terms and that it leaves open questions of legislative intent. The most obvious, relevant ambiguity is found in the independent suit provision of § 4. It gave the Pueblo Indians at least two years to "assert and maintain *unaffected by the provisions of this Act* their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction." § 4 (emphasis added). The meaning of the underlined phrase, which is determinative of the outcome of this case, cannot be determined from the plain language of the statute. Without resort to the legislative history, this phrase is suscepti-

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[7] Plaintiffs argue that this Court must construe ambiguous statutory language in favor of Indian claimants. This approach was rejected by the Supreme Court in *Mountain States Tel. & Tel. Co. v. Santa Ana*, 472 U.S. 237 (1985), which applied standard canons of statutory construction to the PLA. The majority did not agree with the dissent's statement that "[a]mbiguous language in Indian statutes . . . always has been construed in favor of restrictions on alienation." *Mountain States*, 472 U.S. at 276. This Court will follow the analysis of the majority, not the dissent. Applying standard canons of statutory construction to the PLA is also consistent with a recent Tenth Circuit opinion. In *Absentee Shawnee Tribe of Indians of Oklahoma v. State*, No. 86-2600 (10th Cir. December 2, 1988) the court stated: "The difference between interpreting a treaty and an act of Congress [in the context of property disputes involving Indian lands] is important. When interpreting a statute, Congress' intent as expressed in the statute is determinative." *Id.*, slip op. at 4.

ble to the meanings ascribed it both by plaintiffs and by defendants. This ambiguity is more pronounced given the language of § 14 of the PLA. Section 14 was Congress' attempt to settle title to grant overlap lands. To resolve the ambiguities inherent in the statute, the Court will now look to the legislative history of the Pueblo Lands Act.

B. Legislative History of the PLA and Section 14

The PLA went through several forms before it was finally passed. The first bill put forth in the Senate in the summer of 1922 was the Bursam Bill. Plaintiff's Ex. LCK 2, p. 8 *et seq.* and S. 3855, 67th Cong., 2nd Sess. (1922). It strongly favored settling title to disputed Indian lands in the non-Indians. For example, it proposed that all non-Indians who could demonstrate possession of their land prior to June 20, 1900 were to be granted title; that all holders of land under Spanish and Mexican land grants which overlapped with Pueblo land were to be awarded the entire overlap; and that the federal court was to have jurisdiction over all questions involving "internal affairs or the government" of the Pueblos. Once word of the Bursam bill reached New Mexico, non-Indian advocates for the Pueblos began to organize opposition. Plaintiffs' Ex. LCK 2, p. 9.

By January 1923, a rival Senate bill had been prepared which was referred to as the "Jones-Leatherwood Bill." The Jones-Leatherwood Bill differed substantially in that it provided for a distinct Court of Pueblo Land Claims which would have had "broad discretionary authority to arbitrate and confirm non-Indian claims." Plaintiffs' Ex. LCK 2, p. 11. *See also* S. 4223, 67th Cong., 4th Sess. (1922). Section 9 of this bill contained a provision which settled Mexican

and Spanish land grant disputes in favor of the Indians. Under this section, the non-Indian grant claimants would suffer the loss and only non-Indian claimants whose title had previously been confirmed by Congress would be entitled to compensation. S. 4223, 67th Cong., 4th Sess., § 9 (1922).

It is self-evident that the Bursam and Jones-Leatherwood bills were at the opposite ends of the spectrum—one applied legal rules, albeit with harsh results for the Indians, and one was almost totally discretionary, which could have led to more favorable results for the Indians.

A third bill was also proposed. The Snyder Bill, submitted on December 16, 1922 in the House of Representaitves, tracked the first six sections of the Bursam Bill but contained a new seventh section. Plaintiff's Ex. LCK 2, p. 16. Section 7 of the Snyder bill was a response to claims that the Bursam Bill was confiscatory of Indian lands. *Id.* Its language gave all overlap lands to the Pueblo, even those that had been patented by the United States in favor of non-Indian claimants. *See* H.R. 13452, 67th Cong., 4th Sess. (1922).

Hearings were held in the Senate and the House in January 1923. Pueblo advocates were quite critical of the Bursam bill's handling of the grant overlap issue, but the overlap provisions of the Jones-Leatherwood Bill were not directly discussed. Plaintiffs' Ex. LCK 2, pps. 19, 25.

In the House, the Snyder Bill, "purged of its most onerous terms," Plaintiffs' Ex. 2, p. 28, was before the committee as was the Jones-Leatherwood Bill. In discussing the overlap provisions of the bill, the committee members seemed to agree that the Indians should retain title to lands which were the subject

of grant overlaps unless the non-Indian claimants under the grant had better title. *See, e.g.*, H.R. 13452 and H.R. 1367, 67th Cong., 4th Sess., 258-259 (1922) where one Congressman states:

> I doubt very much whether anybody on this committee would for a minute consider any legislation which would authorize the validity of these Spanish grants to non-Indians where they overlap Pueblo territory unless the grant antedated the grant to the Indians. So I do not think we are particularly concerned with any cases except those where the evidence would show that the grant to the non-Indians was of an earlier date than the grant to the Indians.

The chairman of the House committee considering the bill seems to agree when he states "I want to say that there is nothing in the Snyder bill which would permit that to be done." *Id.* It is also important to note that both Senate and House committees evidenced "vigorous and overwhelming sentiment favoring a fixed rule of law over a flexible, discretionary approach to the title disputes." Plaintiffs' Ex. LCK 2, p. 39. They also agreed that there must be a statute of limitations for past adverse possession of Pueblo lands. *Id.*

After hundreds of pages of testimony and discussion, *see, e.g.* H.R. 13452 and H.R. 13674, 67th Cong., 4th Sess. (1922), the PLA as we now know it was passed. The 1923 hearings were the only ones held by Congress prior to the passage of the PLA in 1924. Section 14 of the PLA, which codified Congress' approach to grant overlap lands, states in relevant part that:

> [i]f any non-Indian party to any such suit shall assert against the Indian title a claim based upon a Spanish or Mexican grant, and if the court should finally find that such claim by the non-Indian is superior to that of the Indian claim, no final decree or judgment of ouster of the said Indians shall be entered or writ of possession or assistance shall be allowed against said Indians, or any of them, against the United States of America acting in their behalf.

The remainder of the provision provides that Congress would consider compensation for the non-Indians who held superior claims of Spanish or Mexican grant overlap lands. Thus, the plain language of the statute coupled with the legislative history indicate that Congress intended that the Pueblo Indians retain title to all overlap lands, even when the non-Indian claimants under the grants had superior title.

Given the above conclusion, the Court must determine whether the Pueblo had a statutory duty to challenge the alleged extinguishment of its right to the MDJL overlap prior to the filing of this suit in 1984. This determination cannot be made without analyzing the interplay between § 14 and §§ 2, 4 and 13 of the PLA.

C. Section 4 of the PLA

1. Independent Suit Provision

Section 4 states that "all persons claiming title to, or ownership of any lands involved in any such suit, or suits, may in addition to any other legal or equitable defenses which they may have or have had . . . , plead limitation of action" based on adverse criteria.

Section 4 lists the adverse possession criteria, the details of which are not relevant to the Court's decision because there is no indication that any non-Indian MDJL claimants brought adverse possession claims before the Board.

Section 4 also contains what the parties refer to as the independent suit provision. This portion of § 4, in combination with § 13, gives the Pueblos at least two years from the filing of the Board's § 2 report in which to "assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction. . . ." § 4.

Plaintiffs claim they are not bringing a suit under § 4, which they concede would be barred.[8] They argue that the limitations provision in § 13 of the Act establishes a "point after which a conclusive defense arises on behalf of those who met the 1924 Act's criteria," *not* a limitation on the time for filing actions to assert title.[9] Under this theory, a defendant under the independent suit provision of § 4 could only be a non-Indian claimant who had met the Act's adverse possession criteria by a specific finding by the Board or by the district court in a quiet title action, *and* the filing of plats and field notes by the Attorney General. That defendant would then have a valid defense to such a suit.

This approach is consistent with Congress' specific concern that the Act secure title for non-Indian claimants who met the § 4 adverse possession criteria,

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[8] See Plaintiffs' Memorandum in Support of Cross-Motion for Summary Judgment, pps. 88-93.

[9] *Id.* at 89.

though it is not reconcilable with the legislative history of the PLA or with common sense. The legislative history clearly states Congress' concern that the Act include a statute of limitations. Plaintiffs' Ex. LCK 2, p. 39. The main concern of the senators and representatives who opposed the liberal bills put forth by Pueblo advocates was that they contained no statute of limitations, not that such bills did not give non-Indian claimants a conclusive defense to future actions brought by the Pueblos.

This distinction may seem one of semantics, but it is important. Plaintiffs argue that the purposes of the Act would be frustrated if the court read the provisions of §§ 4 and 13 as a statute of limitations, which "would have afforded settlers only pleas in abatement, not conclusive defenses on the merits of the title . . . ." as "limitations periods extinguish remedies, not substantive rights." [10] Even accepting plaintiffs' distinction, a statutory provision which extinguishes the Pueblos' remedies has the same effect as a provision which would give the settlers a substantive right to show they had title to the lands at issue pursuant to the PLA.

Under plaintiffs' theory, the Pueblos woud have the opportunity to bring suits in which the burden would be on the successful non-Indian claimants under the PLA to show they held valid title by virtue of the § 4 adverse possession criteria. By contrast, under the statute of limitations theory advanced by defendants, a Pueblo has at least two years to bring its challenge to the Board's actions through a § 4 independent suit. If it does not bring such a suit before the Attorney General files the plats and field notes

[10] Plaintiffs' Brief in Support of Cross-Motion for Summary Judgment, p. 89 (citations omitted).

pursuant to § 13, it is barred. Only under defendants' theory is Congress' intention "to provide for the *final adjudication and settlement* of a very complicated and difficult series of conflicting titles affecting lands claimed by the Pueblo Indians of New Mexico" honored. *Mountain States*, 472 U.S. at 240, quoting S. Rep. No. 492, 68th Cong., 1st Sess., 3 (1924) (emphasis added) (footnote omitted). Accordingly, the Court finds that the provisions of §§ 4 and 13 should be read as a statute of limitations, not merely as a defense to future claims brought by or on behalf of the Pueblos.[11]

This holding presumes that the independent suit provision of § 4 contemplates actions which challenge the validity of the findings of extinguishment in the Board's § 2 reports and that the limitations provision bars suits by the United States on behalf of the Pueblo, as well as those brought by the Pueblo itself.

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[11] In *Santa Ana v. Baca*, 844 F.2d 708 (10th Cir. 1988), the court stated in a footnote that the PLA was

> intended only to oblige non-Indians to prove claims to Pueblo lands; Pueblos could only file suit in response to claims made against them by non-Indians . . . Furthermore, Santa Ana had no reason to file suit under § 4 of the Act because no claim was made against it concerning the disputed land. Santa Ana had no notice that its rights to the disputed parcel were jeopardized by non-Indian claims.

Id. at n.1. The important distinction between the case at bar and *Santa Ana* concerns notice. Although no claims by non-Indian claimants to MDJL lands were filed before the Board, the Pueblo did have notice that the Board was attempting to extinguish title to the overlap land. Notice was evident in the Board's § 2 report; the § 3 quiet title action, the complaint to which was based on the Board's § 2 report; and the Board's § 6 report which listed the Pueblo's acreage as tens of thousands of acres less than it would have been had the overlap acreage been included.

2. Scope of the Independent Suit Provision

Plaintiffs argue that the independent suits authorized by § 4 "were not challenges to the Board's factual determinations on the merits of the private claims" but that they "simply permitted the Pueblo a last opportunity to sue as if the Act had never been passed." [12] They also argue that "[t]he Act in fact afforded no opportunity for any review of the Board's decisions on their merits, except as to the compensation awards under § 6."[13] This argument is based on that portion of § 4 which states that the Pueblo Indians' right to "assert and maintain *unaffected by the provisions of this Act* their title and right to any land by original proceedings . . . ." shall not be impaired or destroyed. (Emphasis added.)

The Court cannot accept plaintiffs' position that under the Act, the Pueblo Indians had no mechanism for challenging the Board's § 2 findings that title to Indian lands had been extinguished. This claim seems particularly strange in light of legislative history indicating that the final draft of what became the PLA was designed to protect the titles of the Pueblo Indians. H.R. 787, 68th Cong., 1st Sess., 9 (1924). Moreover, and perhaps most importantly, a logical reading off the plain language of the statute indicates that the independent suit provision of § 4 provided for the bringing of suits to challenge the Board's findings. The phrase "unaffected by the provisions of this Act" is logically read as *allowing* the Pueblo to bring suits which challenged the findings of the Board. For example, the Board's § 2 report was

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[12] Plaintiffs' Memo in Support of Cross-Motion for Summary Judgment, p. 85.

[13] *Id.* at 84-85.

filed pursuant to the provisions of the Act. Since independent suits could be brought "unaffected by the provisions of the Act," the Pueblo could, under § 4, bring suits challenging the validity of the Board's § 2 findings of extinguishment.

While §§ 4 and 13 are to be construed as a statute of limitations, it is important to note that the Act and its legislative history give no indication that Congress ever directly contemplated that the Board would attempt to extinguish title to Pueblo lands without first finding that the adverse possession criteria of § 4 had been met. However, Congress did provide the Pueblos a mechanism for challenging any findings of the Board. This mechanism, as discussed above, was the independent suit provision of § 4.

The Plaintiffs argue that:

> . . . the legal ineffectiveness of the Board's lone statement about the overlap is not remedied by the failure of someone to do something about it. If an act is void, it is void, and the very fact of its invalidity means that no action is required to make it more void.[14]

Plaintiffs cite no law to support this unconvincing proposition. The Court recognizes that it may have been a dauting task to challenge the Board's findings since its meetings were closed and no explanation was given for its findings. Plaintiffs' Ex. LCK 2, p. 60. However, once the Board made a finding of extinguishment, that land was brought within the provisions of the PLA and the statute of limitations, in accordance with the provisions of §§ 4 and 13, began to run against the Pueblo. This analysis of the PLA

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[14] Plaintiffs' Reply Brief at 9.

is consistent with previous decisions in this district. *See, e.g. Pueblo of Santa Domingo v. Atchison, Topeka and Santa Fe Ry.*, CIV No. 83-1889 HB (D. N.M. Aug. 26, 1985). It is also the analysis most consistent with Congress' intent to pass legislation which would "provide for the *final* adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claimed by the Pueblo Indians of New Mexico." H.R. 787, 68th Cong., 1st Sess., 2 (9124) [*sic*] (emphasis added).

3. Effect of provision on the United States

Plaintiffs claim that even if § 4 of the 1924 Act bars the Pueblo from bringing this suit, the United States can bring this suit on the Pueblos' behalf. Defendants argue that because the United States disclaimed any interest in the MDJL lands, it cannot now bring an action for MDJL lands on the Pueblo's behalf. The real question is whether the PLA, which refers in §§ 4 and 13 only to the Pueblos, binds the United States as trustee for the Pueblos.

Plaintiffs argue that *United States v. Candelaria*, 271 U.S. 432 (1926), is on all fours with the case at bar. The Court finds otherwise. In *Candelaria*, the Supreme Court held that Pueblos were "Indian tribes" within the meaning of the Nonintercourse Act. 271 U.S. at 441-442. Judgments against the Pueblo of Laguna did not bind the United States because

> [t]he Indians of the Pueblo are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any-wise without its consent. A judgment or decree which operates directly or indirectly to transfer the lands from the Indians, where the

> United States has not authorized or appeared in the suit, infringes that restriction."

Id. at 443. The *Candelaria* Court was concerned with transactions which occurred *prior* to the passage of the PLA and which were governed exclusively by the Nonintercourse Act. The events under consideration in the case at bar are governed by the PLA, which was passed in an attempt to settle complicated questions of title which resulted from the confusion created in 1913 when the Supreme Court implied that the Nonintercourse Act might apply to the Pueblos. *Mountain States*, 472 U.S. at 242-243, *United States v. Sandoval*, 231 U.S. 28 (1913).

In view of the caselaw and the history of the PLA, it would be absurd for Congress to pass a statute which did not encompass the United States' trust duty to the Indians. It would hardly settle title to the lands of non-Indian claimants if the United States could bring actions on behalf of the Pueblo once the statute of limitations had run on the Pueblos. Moreover, § 5, of the PLA strongly suggests that the limitations period runs against the United States, as well as the Pueblo. Section 5 states:

> The plea of limitations, successfully maintained, shall entitle the claimants so pleading to a decree in favor of them . . . which shall have the effect of a deed of quitclaim as against the United States and said Indians, *and a decree in favor of claimants upon any other ground shall have a like effect.*

(Emphasis added.) The latter portion of this section suggests that Congress intended any favorable decree for non-Indian claimants to bind the United States, as well as the Indians. Since this case in-

volves a § 2 report issued by the Board, not a "decree," which suggests a court order, the section is not directly on point. It is, however, evidence that Congress did not intend for the United States to escape the effect of actions brought by the Pueblos. For example, had the Indians brought an independent suit as authorized by § 4, the suit would have been brought in federal district court. Under the terms of § 5, an adverse ruling for the Pueblo in such a suit would have had the effect of a quitclaim deed against the United States, as well as the Indians.

D. Interplay between Sections 3, 4 and 14

The Court has determined that the Board's extinguishment of title to overlap lands, though not done in compliance with the § 4 adverse possession requirements, brought that land within the provisions of the PLA. The Court has also determined that §§ 4 and 13 operate as a statute of limitations against the Pueblo. The Court must now reconcile those determinations with its finding that Congress, through § 14, intended that Pueblo Indians retain title to all overlap lands.

At first glance, Congress seems to have limited the effect of § 14 to § 3 quiet title suits in which the defendants claimed superior title under Mexican or Spanish land grants. Nothing in § 14 indicates that it was meant to bind the Board. The language of § 14 refers to "any such suit" and makes repeated references to "the court."

At first blush, it may seem contradictory to suggest that the Board could randomly extinguish title to approximately 24,000 acres of overlap land in a § 2 report when, under a § 3 quiet title action, non-Indian settlers would lose overlap land to the In-

dians, even if they held superior title. But this contradiction dissolves when the statute is viewed as a whole. Had the Pueblo brought a timely independent suit under § 4 and successfully challenged the Board's extinguishment to the overlap, that land would have become part of the § 3 quiet title action. Had the defendants in the quiet title action raised the issue of superior possession under the MDJL, § 14 would have kicked in and title to the overlap lands would have remained in the Pueblo.

IV. Conclusion

Based on the above analysis, the Court concludes that suit now brought by plaintiffs is one which was encompassed by the independent suit provision of § 4 of the Pueblo Lands Act and that the statute of limitations on such a suit, as conceded by plaintiffs,[15] has long since run. Having so held, it is unnecessary for the Court to consider any of the additional arguments advanced by defendants.

An order in accordance with this opinion will be entered of even date.

DATED this 2d day of February, 1989.

/s/ John E. Coung
United States District Judge

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[15] See Plaintiffs' Memorandum in Support of Cross-Motion for Summary Judgment, pps. 88-93. Plaintiffs conceded that the statute of limitations had run on § 4 independent suits but argued that theirs was not such a suit. This Court has found otherwise.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Nos. 89-2077
89-2091
89-2142

UNITED STATES OF AMERICA, on its own behalf and on behalf of THE PUEBLO OF SANTO DOMINGO,
PLAINTIFF-COUNTER-DEFENDANT-APPELLANT,

AND

THE PUEBLO OF SANTO DOMINGO,
PLAINTIFF-INTERVENOR,

v.

LELAND THOMPSON, JR., ET AL.,
DEFENDANTS-APPELLEES.

ORDER

Filed October 21, 1991

Before McKAY, Chief Judge, HOLLOWAY, LOGAN, SEYMOUR, MOORE, ANDERSON, TACHA, BALDOCK, BRORBY and EBEL, Circuit Judges.

This matter comes on for consideration of appellant's and intervenor's petitions for rehearing and suggestions for rehearing en banc in the captioned cases.

Upon consideration whereof, the petitions for rehearing are denied by the panel that rendered the decision sought to be reheard.

In accordance with Rule 35(b) of the Federal Rules of Appellate Procedure, the suggestions for rehearing en banc were transmitted to all the judges of the court in regular active service. No member of the panel and no judge in regular active service on the court having requested that the court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc are denied.

Entered for the Court

ROBERT L. HOECKER, Clerk

By: Patrick Fisher
PATRICK FISHER
Chief Deputy Clerk

APPENDIX D

48 Stat. 108

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in fulfillment of the Act of June 7, 1924 (43 Stat. 636), there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sums hereinafter set forth, in compensation to the several Indian pueblos hereinafter named, in payment of the liability of the United States to the said pueblos as declared by the Act of June 7, 1924, which appropriations shall be made in equal annual installments as hereinafter specified, and shall be deposited in the Treasury of the United States and shall be expended by the Secretary of the Interior, subject to approval of the governing authorities of each pueblo in question, at such times and in such amounts as he may deem wise and proper; for the purchase of lands and water rights to replace those which have been divested from said pueblo under the Act of June 7, 1924, or for the purchase or construction of reservoirs, irrigation works, or other permanent improvements upon or for the benefit of the lands of said pueblos.

SEC. 2. In addition to the awards made by the Pueblo Lands Board, the following sums, to be used as directed in section 1 of this Act, and in conformity with the Act of June 7, 1924, be, and hereby are, authorized to be appropriated:

Pueblo of Jemez, $1,885; pueblo of Nambe, $47,439.50; pueblo of Taos, $84,707.09; pueblo of Santa Ana, $2,908.38; pueblo of Santo Domingo, $4,256.56; pueblo of Sandia, $12,980.62; pueblo of

San Felipe, $14,954.53; pueblo of Isleta, $47,751.31; pueblo of Picuris, $66,574.40; pueblo of San Ildefonso, $37,058.28; pueblo of San Juan, $153,863.04; pueblo of Santa Clara, $181,114.19; pueblo of Cochiti, $37,826.37; pueblo of Pojoaque, $68,562.61; in all, $761,954.88; *Provided, however*, That the Secretary of the Interior shall report back to Congress any errors or omissions in the foregoing authorizations measured by the present fair market value of the lands involved, as heretofore determined by the appraisals of said tracts by the appraisers appointed by the Pueblo Lands Board, with evidence supporting his report and recommendations.

SEC. 3. Pursuant to the aforesaid Act of June 7, 1924, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, a sum to compensate white settlers or non-Indian claimants who have been found by the Pueblo Lands Board, created under said Act of June 7, 1924, to have occupied and claimed land in good faith but whose claim has not been sustained and whose occupation has been terminated under said Act of June 7, 1924, for the fair market value of lands, improvements appurtenant thereto, and water rights. The non-Indian claimants, or their successors, as found and reported by said Pueblo Lands Board, to be compensated out of said appropriations to be disbursed under the direction of the Secretary of the Interior in the amounts due them as appraised by the appraisers appointed by said Pueblo Lands Board, as follows:

Within the pueblo of Tesuque, $1,094.64; within the pueblo of Nambe, $19,393.59; within the pueblo of Taos, $14,064.57; within the Tenorio Tract, Taos Pueblo, $43,165.26; within the pueblo of Santa Ana

(El Ranchito grant), $846.26; within the pueblo of Santo Domingo, $66; within the pueblo of Sandia, $5,354.46; within the pueblo of San Felipe, $16,424.68; within the pueblo of Isleta, $6,624.45; within the pueblo of Picuris, $11,464.73; within the pueblo of San Ildefonso, $16,209.13; within the pueblo of San Juan, $19,938.22; within the pueblo of Santa Clara, $35,350.88; within the pueblo of Cochiti, $9,653.81; within the pueblo of Pojoaque, $1,767.26; within the pueblo of Laguna, $30,668.87; in all, $232,086.80; *Provided, however*, That the Secretary of the Interior shall report back to Congress any errors in the amount of award measured by the present fair market value of the lands involved and any errors in the omissions of legitimate claimants for award, with evidence supporting his report and recommendations.

SEC. 4. That for the purpose of safeguarding the interests and welfare of the tribe of Indians known as the Pueblo de Taos of New Mexico in the certain lands hereinafter described, upon which lands said Indians depend for water supply, forage for their domestic livestock, wood and timber for their personal use and as the scene of certain of their religious ceremonials, the Secretary of Agriculture may and he hereby is authorized and directed to designate and segregate said lands, which shall not thereafter be subject to entry under the land laws of the United States, and to thereafter grant to said Pueblo de Taos, upon application of the governor and council thereof, a permit to occupy said lands and use the resources thereof for the personal use and benefit of said tribe of Indians for a period of fifty years, with provision for subsequent renewals if the use and occupancy by said tribe of Indians shall continue, the

provisions of the permit are met and the continued protection of the watershed is required by public interest. Such permit shall specifically provide for and safeguard all rights and equities hitherto established and enjoyed by said tribe of Indians under any contracts or agreements hitherto existing, shall authorize the free use of wood, forage, and lands for the personal or tribal needs of said Indians, shall define the conditions under which natural resources under the control of the Department of Agriculture not needed by said Indians shall be made available for commercial use by the Indians or others, and shall establish necessary and proper safeguards for the efficient supervision and operation of the area for national forest purposes and all other purposes herein stated, the area referred to being described as follows:

Beginning at the northeast corner of the Pueblo de Taos grant, thence northeasterly along the divide between Rio Pueblo de Taos and Rio Lucero and along the divide between Rio Pueblo de Taos and Red River to a point a half mile east of Rio Pueblo de Taos; thence southwesterly on a line half mile east of Rio Pueblo de Taos and parallel thereto to the northwest corner of township 25 north, range 15 east; thence south on the west boundary of township 25 north, range 15 east, to the divide between Rio Pueblo de Taos and Rio Fernandez de Taos; thence westerly along the divide to the east boundary of the Pueblo de Taos grant; thence north to the point of beginning; containing approximately thirty thousand acres, more or less.

SEC. 5. Except as otherwise provided herein the Secretary of the Interior shall disburse and expend the amounts of money herein authorized to be appropriated, in accordance with and under the terms and conditions of the Act approved June 7, 1924:

Provided, however, That the Secretary be authorized to cause necessary surveys and investigations to be made promptly to ascertain the lands and water rights that can be purchased out of the foregoing appropriations and earlier appropriations made for the same purpose, with full authority to disburse said funds in the purchase of said lands and water rights without being limited to the appraised values thereof as fixed by the appraisers appointed by the Pueblo Lands Board appointed under said Act of June 7, 1924, and all prior Acts limiting the Secretary of the Interior in the disbursement of said funds to the appraised value of said lands as fixed by said appraisers of said Pueblo Lands Board be, and the same are, expressly repealed: *Provided further*, That the Secretary of the Interior be, and he is hereby, authorized to disburse a portion of said funds for the purpose of securing options upon said lands and water rights and necessary abstracts of title thereof for the necessary period required to investigate titles and which may be required before disbursement can be authorized: *Provided further*, That the Secretary of the Interior be, and he is hereby, authorized, out of the appropriations of the foregoing amounts and out of the funds heretofore appropriated for the same purpose, to purchase any available lands within the several pueblos which in his discretion it is desirable to purchase, without waiting for the issuance of final patents directed to be issued under the provisions of the Act of June 7, 1924, where the right of said pueblos to bring independent suits, under the provisions of the Act of June 7, 1924, has expired: *Provided further*, That the Secretary of the Interior shall not make any expenditures out of the pueblo funds resulting from the appropriations set forth herein, or prior appropriations for the same purpose, without

first obtaining the approval of the governing authorities of the pueblo affected: *And provided further*, That the governing authorities of any pueblo may initiate matters pertaining to the purchase of lands in behalf of their respective pueblos, which matters, or contracts relative thereto, will not be binding or concluded until aproved by the Secretary of the Interior.

SEC. 6. Nothing in this Act shall be construed to prevent any pueblo from prosecuting independent suits as authorized under section 4 of the Act of June 7, 1924. The Secretary of the Interior is authorized to enter into contract with the several Pueblo Indian tribes, affected by the terms of this Act, in consideration of the authorization of appropriations contained in section 2 hereof, providing for the dismissal of pending and the abandonment of contemplated original proceedings, in law or equity, by, or in behalf of said Pueblo Indian tribes, under the provisions of section 4 of the Act of June 7, 1924 (43 Stat. L. 636), and the pueblo concerned may elect to accept the appropriations herein authorized, in the sums herein set forth, in full discharge of all claims to compensation under the terms of said Act, notifying the Secretary of the Interior in writing of its election so to do: *Provided*, That if said election by said pueblo be not made, said pueblo shall have one year from the date of the approval of this Act within which to file any independent suit authorized under section 4 of the Act of June 7, 1924, at the expiration of which period the right to file such suit shall expire by limitation: *And provided further*, That no ejectment suits shall be filed against non-Indians entitled to compensation under this Act, in less than six months after the sums herein authorized are appropriated.

SEC. 7. Section 16 of the Act approved June 7, 1924, is hereby amended to read as follows:

"SEC. 16. That if the Secretary of the Interior deems it to be for the best interest of the Indians that any land adjudged by the court or said Lands Board against any claimant be sold, he may, with the consent of the governing authorities of the pueblo, order the sale thereof, under such regulations as he may make, to the highest bidder for cash; and if the buyer thereof be other than the losing claimant, the purchase price shall be used in paying to such losing claimant the adjudicated value of the improvements aforesaid, if found under the provisions of section 15 hereof, and the balance thereof, if any, shall be paid over to the proper officer, or officers, of the Indian community, but if the buyer be the losing claimant, and the value of his improvements has been adjudicated as aforesaid, such buyer shall be entitled to have credit upon his bid for the value of such improvements so adjudicated."

SEC. 8. The attorney or attorneys for such Indian tribe or tribes shall be paid such fee as may be agreed upon by such attorney or attorneys and such Indian tribe or tribes, but in no case shall the fee be more than 10 per centum of the sum herein authorized to be appropriated for the benefit of such tribe or tribes, and such attorney's fees shall be disbursed by the Secretary of the Interior in accordance herewith out of any funds appropriated for said Indian tribe or tribes under the provisions of the Act of June 7, 1924 (43 Stat. L. 636), or this Act: *Provided however*, That 25 per centum of the amount agreed upon as attorneys' fees shall be retained by the Secretary of the Interior to be disbursed by him under the terms of the contract, subject to approval of the Secretary

of the Interior, between said attorneys and said Indian tribes, providing for further services and expenses of said attorneys in furtherance of the objects set forth in section 19 of the Act of June 7, 1924.

SEC. 9. Nothing herein contained shall in any manner be construed to deprive any of the Pueblo Indians of a prior right to the use of water from streams running through or bordering on their respective pueblos for domestic, stock-water, and irrigation purposes for the lands remaining in Indian ownership, and such water rights shall not be subject to loss by nonuse or abandonment thereof as long as title to said lands shall remain in the Indians.

SEC. 10. The sums authorized to be appropriated under the terms and provisions of section 2 of this Act shall be appropriated in three annual installments, beginning with the fiscal year 1937.

Approved, May 31, 1933.

43 Stat. 636

CHAP. 331.— . . .

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to quiet title to various lots, parcels, and tracts of land in the State of New Mexico for which claim shall be made by or on behalf of the Pueblo Indians of said State as hereinafter provided, the United States of America, in its sovereign capacity as guardian of said Pueblo Indians shall, by its Attorney General, file in the District Court of the United States for the District of New Mexico, its bill or bills of complaint with a prayer for discovery of the nature of any claim or claims of any kind whatsoever adverse to the claim of said Pueblo Indians, as hereinafter determined.

SEC. 2. That there shall be, and hereby is, established a board to be known as "Pueblo Lands Board" to consist of the Secretary of the Interior, the Attorney General, each of whom may act through an assistant in all hearings, investigations, and deliberations in New Mexico, and a third member to be appointed by the President of the United States. The board shall be provided with suitable quarters in the city of Santa Fe, New Mexico, and shall have power to require the presence of witnesses and the production of documents by subpoena, to employ a clerk who shall be empowered to administer oaths and take acknowledgments, shall employ such clerical assistance, interpreters, and stenographers with such compensation as the Attorney General shall deem adequate, and it shall be provided with such necessary supplies and equipment as it may require on requisitions to the Department of Justice. The compensation and allowance for travel and expenses of the member appointed by the President shall be fixed by the Attorney General.

It shall be the duty of said board to investigate, determine, and report and set forth by metes and bounds, illustrated where necessary by field notes and plats, the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act, and the board shall not include in their report any claims of non-Indian claimants who, in the opinion of said board after investigation, hold and occupy such claims of which they have had adverse possession, in accordance with the provisions of

section 4 of this Act: *Provided, however*, That the board shall be unanimous in all decisions whereby it shall be determined that the Indian title has been extinguished.

The board shall report upon each pueblo as a separate unit and upon the completion of each report one copy shall be filed with the United States District Court for the District of New Mexico, one with the Attorney General of the United States, one with the Secretary of the Interior, and one with the Board of Indian Commissioners.

SEC. 3. That upon the filing of each report by the said board, the Attorney General shall forthwith cause to be filed in the United States District Court for the District of New Mexico, as provided in section 1 of this Act, a suit to quiet title to the lands described in said report as Indian lands the Indian title to which is determined by said report not to have been extinguished.

SEC. 4. That all persons claiming title to, or ownership of any lands involved in any such suit, or suits, may in addition to any other legal or equitable defenses which they may have or have had under the laws of the Territory and State of New Mexico, plead limitation of action, as follows, to wit:

(a) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed, under color of title from the 6th day of January, 1902, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation, or adverse possession of the Territory or of the State of New Mexico, since the 6th day of January, 1902, to of the State of New Mexico, since the

6th day of January, 1902, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

(b) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed with claim of ownership, but without color of title from the 16th day of March, 1889, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation or adverse possession of the Territory or of the State of New Mexico, from the 16th day of March, 1899, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

Nothing in this Act contained shall be construed to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction and any such right may be asserted at any time prior to the filing of the field notes and plats as provided in section 13 hereof, and jurisdiction with respect to any such original proceedings is hereby conferred upon the United States District Court for the District of New Mexico with right of review as in other cases: *Provided however*, That any contract entered into with any attorney or attorneys by the Pueblo Indians of New Mexico, to carry on such litigation shall be subject to and in accordance with existing laws of the United States.

SEC. 5. The plea of such limitations, successfully maintained, shall entitle the claimants so pleading to a decree in favor of them, their heirs, executors, suc-

cessors, and assigns for the premises so claimed by them, respectively, or so much thereof as may be established, which shall have the effect of a deed of quitclaim as against the United States and said Indians, and a decree in favor of claimants upon any other ground shall have a like effect.

The United States may plead in favor of the pueblo, or any individual Indian thereof, as the case might be, the said limitations hereinbefore defined.

SEC. 6. It shall be the further duty of the board to separately report in respect of each such pueblo—

(a) The area and character of any tract or tracts of land within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico and the extent, source, and character of any water right appurtenant thereto in possession of non-Indian claimants at the time of filing such report, which are not claimed for said Indians by any report of the board.

(b) Whether or not such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians. Seasonable prosecution is defined to mean prosecution by the United States within the same period of time as that within which suits to recover real property could have been brought under the limitation statutes of the Territory and State of New Mexico.

(c) The fair market value of said water rights and of said tract or tracts of land (exclusive of any improvements made therein or placed thereon by non-Indian claimants) whenever the board shall determine that such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by season-

able prosecution of any right of the United States or of said Indians, and the amount of loss, if any, suffered by said Indians through failure of the United States seasonably to prosecute any such right.

The United States shall be liable, and the board shall award compensation, to the pueblo within the exterior boundaries of whose lands such tract or tracts of land shall be situated or to which such water rights shall have been appurtenant to the extent of any loss suffered by said Indians through failure of the United States seasonably to prosecute any right of the United States or of said Indians, subject to review as herein provided. Such report and award shall have the force and effect of a judicial finding and final judgment upon the question and amount of compensation due to the Pueblo Indians from the United States for such losses. Such report shall be filed simultaneously with and in like manner as the reports hereinbefore provided to be made and filed in section 2 of this Act.

At any time within sixty days after the filing of sad report with the United States District Court for the District of New Mexico as herein provided the United States or any pueblo or Indians concerned therein or affected thereby may, in respect of any report upon liability or of any finding of amount or award of compensation set forth in such report, petition said court for judicial review of said report, specifying the portions thereof in which review is desired. Said court shall thereupon have jurisdiction to review, and shall review, such report, finding, or award in like manner as in the case of proceedings in equity. In any such proceeding the report of the board shall be prima facie evidence of the facts, the values, and the liability therein set forth, subject,

however, to be rebutted by competent evidence. Any party in interest may offer evidence in support or in opposition to the findings in said report in any respect. Said court shall after hearing render its decision so soon as practicable, confirming, modifying, or rejecting said report or any part thereof. At any time within thirty days after such decision is rendered said court shall, upon petition of any party agrieved, certify the portions of such report, review of which has been sought, together with the record in connection therewith, to the United States Circuit Court of Appeals for the Eighth Circuit, which shall have jurisdiction to consider, review, and decide all questions arising upon such report and record in like manner as in the case of appeals in equity, and its decision thereon shall be final.

Petition for review of any specific finding or award of compensation in any report shall not affect the finality of any findings nor delay the payment of any award set forth in such report, review of which shall not have been so sought, nor in any proceeding for review in any court under the provisions of this section shall costs be awarded against any party.

SEC. 7. It shall be the further duty of the board to investigate, ascertain, and report to the Secretary of the Interior who shall report to the Congress of the United States, together with his recommendation, the fair market value of lands, improvements appurtenant thereto, and water rights of non-Indian claimants who, in person or through their predecessors in title prior to January 6, 1912, in good faith and for a valuable consideration purchased and entered upon Indian lands under a claim of right based upon a deed or document purporting to convey title to the

land claimed or upon a grant, or license from the governing body of a pueblo to said land, but fail to sustain such claim under the provisions of this Act, together with a statement of the loss in money value thereby suffered by such non-Indian claimants. Any lands lying within the exterior boundaries of the pueblo of Nambe land grant, which were conveyed to any holder or occupant thereof or his predecessor or predecessors in interest by the governing authorities of said pueblo, in writing, prior to January 6, 1912, shall unless found by said board to have been obtained through fraud or deception, be recognized as constituting valid claims by said board and by said courts, and disposed of in such manner as lands the Indian title to which has been determined to have been extinguished pursuant to the provisions of this Act: *Provided*, That nothing in this section contained with reference to the said Nambe Pueblo Indians shall be construed as depriving the said Indians of the right to impeach any such deed or conveyance for fraud or to have mistakes therein corrected through a suit in behalf of said pueblo or of an individual Indian under the provisions of this Act.

SEC. 8. It shall be the further duty of the board to investigate, ascertain, and report to the Secretary of the Interior the area and the value of the lands and improvements appurtenant thereto of non-Indian claimants within or adjacent to Pueblo Indian settlements or towns in New Mexico, title to which in such non-Indian claimants is valid and indefeasible, said report to include a finding as to the benefit to the Indians in anywise of the removal of such non-Indian claimants by purchase of their lands and improvements and the transfer of the same to the Indians, and the Secretary of the Interior shall report to Congress the facts with his recommendations in the premises.

SEC. 9. That all lands, the title to which is determined in said suit or suits, shall, where necessary, be surveyed and mapped under the direction of the Secretary of the Interior, at the expense of the United States, but such survey shall be subject to the approval of the judge of the United States District Court for the District of New Mexico, and if approved by said judge shall be filed in said court and become a part of the decree or decrees entered in said district court.

SEC. 10. That necessary costs in all original proceedings under this Act, to be determined by the court, shall be taxed against the United States and any party aggrieved by any final judgment or decree shall have the right to a review thereof by appeal or writ of error or other process, as in other cases, but upon such appeal being taken each party shall pay his own costs.

SEC. 11. That in the sense in which used in this Act the word "purchase" shall be taken to mean the acquisition of community lands by the Indians other than by grant or donation from a sovereign.

SEC. 12. That any person claiming any interest in the premises involved but not impleaded in any such action may be made a party defendant thereto or may intervene in such action, setting up his claim in usual form.

SEC. 13. That as to all lands within the exterior boundaries of any lands granted or confirmed to the Pueblo Indians of New Mexico, by any authority of the United States of America or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise and which have not been claimed for said Indians by court proceedings then pending or the findings and report of the board as

herein provided, the Secretary of the Interior at any time after two years after the filing of said reports of the board shall file field notes and plat for each pueblo in the office of the surveyor general of New Mexico at Santa Fe, New Mexico, showing the lands to which the Indian title has been extinguished as in said report set out, but excluding therefrom lands claimed by or for the Indians in court proceedings then pending, and copies of said plat and field notes certified by the surveyor general of New Mexico as true and correct copies shall be accepted in any court as competent and conclusive evidence of the extinguishment of all the right, title, and interest of the Indians in and to the lands so described in said plat and field notes and of any claim of the United States in or to the same. And the Secretary of the Interior within thirty days after the Indians' right to bring independent suits under this Act shall have expired, shall cause notice to be published in some newspaper or newspapers of general circulation issued, if any there be, in the county wherein lie such lands claimed by non-Indian claimants, respectively, or wherein some part of such lands are situated, otherwise in some newspaper or newspapers of general circulation published nearest to such lands, once a week for five consecutive weeks, setting forth as nearly as may be the names of such non-Indian claimants of land holdings not claimed by or for the Indians as herein provided, with a description of such several holdings, as shown by a survey of Pueblo Indian lands heretofore made under the direction of the Secretary of the Interior and commonly known as the "Joy Survey," or as may be otherwise shown or defined by authority of the Secretary of the Interior, and requiring that any person or persons claiming such described parcel or

parcels of land or any part thereof, adversely to the apparent claimant or claimants so named as aforesaid, or their heirs or assigns, shall, on or before the thirtieth day after the last publication of such notice, file his or their adverse claim in the United States Land Office in the land district wherein such parcel or parcels of land are situate, in the nature of a contest, stating the character and basis of such adverse claim, and notice of such contest shall be served upon the claimant or claimants named in the said notice, in the same manner as in cases of contest of homestead entries. If no such contest is instituted as aforesaid, the Secretary of the Interior shall issue to the claimant or claimants, or their heirs or assigns a patent or other certificate of title for the parcel or parcels of land so described in said notice; but if a contest be filed it shall proceed and be heard and decided as contests of homestead entries are heard and decided under the rules and regulations of the General Land Office pertinent thereto. Upon such contest either party may claim the benefit of the provisions of section 4 of this Act to the same extent as if he were a party to a suit to quiet title brought under the provisions of this Act, and the successful party shall receive a patent or certificate of title for the land as to which he is successful in such proceeding. Any patent or certificate of title issued under the provisions of this Act shall have the effect only of a relinquishment by the United States of America and the said Indians.

If after such notice more than one person or group of persons united in interest makes claim in such land office adverse to the claimant or claimants named in the said notice, or to any other person or group of persons who may have filed such contest,

each contestant shall be required to set forth the basis and nature of his respective claim, and thereupon the said claims shall be heard and decided as upon an original contest or intervention.

And in all cases any person or persons whose right to a given parcel or parcels of land has become fixed either by the action of the said board or the said court or in such contest may apply to the Commissioner of the General Land Office for a patent or certificate of title and receive the same without cost or charge.

SEC. 14. That if any non-Indian party to any such suit shall assert against the Indian title a claim based upon a Spanish or Mexican grant, and if the court should finally find that such claim by the non-Indian is superior to that of the Indian claim, no final decree or judgment of ouster of the said Indians shall be entered or writ of possession or assistance shall be allowed against said Indians, or any of them, or against the United States of America acting in their behalf. In such case the court shall ascertain the area and value of the land thus held by any non-Indian claimant under such superior title, excluding therefrom the area and value of lots or parcels of land the title to which has been found to be in other persons under the provisions of this Act: *Provided, however*, That any findings by the court under the provisions of this section may be reviewed on appeal or writ of error at the instance of any party aggrieved thereby, in the same manner, to the same extent, and with like effect as if such findings were a final judgment or decree. When such finding adverse to the Indian claim has become final, the Secretary of the Interior shall report to Congress the facts, including the area and value of the land so adjudged

against the Indian claim, with his recommendations in the premises.

SEC. 15. That when any claimant, other than the United States for said Indians not covered by the report provided for in section 7 of this Act, fails to sustain his claim to any parcel of land within any Pueblo Indian grant, purchase, or donation under the provisions of this Act, but has held and occupied any such parcel in good faith, claiming the same as his own, and the same has been improved, the value of the improvements upon the said parcel of land shall be found by the court and reported by the Secretary of the Interior to Congress, with his recommendations in the premises.

SEC. 16. That if any land adjudged by the court or said lands board against any claimant be situate among lands adjudicated or otherwise determined in favor of non-Indian claimants and apart from the main body of the Indian land, and the Secretary of the Interior deems it to be for the best interest of the Indians that such parcels so adjudged against the non-Indian claimant be sold, he may, with the consent of the governing authorities of the pueblo, order the sale thereof, under such regulations as he may make, to the highest bidder for cash, and if the buyer thereof be other than the losing claimant, the purchase price shall be used in paying to such losing claimant the adjudicated value of the improvements aforesaid, if found under the provisions of section 15 hereof, and the balance thereof, if any, shall be paid over to the proper officer, or officers, of the Indian community, but if the buyer be the losing claimant, and the value of his improvements has been adjudicated as aforesaid, such buyer shall be entitled to have credit upon his bid for the value of such improvements so adjudicated.

SEC. 17. No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and no sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.

SEC. 18. That the pleading, practice, procedure, and rules of evidence shall be the same in all causes arising under this Act as in other civil causes in the Federal courts, except as otherwise herein provided.

SEC. 19. That all sums of money which may hereafter be appropriated by the Congress of the United States for the purpose of paying in whole or in part any liability found or decreed under this Act from the United States to any pueblo or to any of the Indians of any pueblo, shall be paid over to the Bureau of Indian Affairs, which Bureau, under the direction of the Secretary of the Interior, shall use such moneys at such times and in such amounts as may seem wise and proper for the purpose of the purchase of lands and water rights to replace those which have been lost to said pueblo or to said Indians, or for purchase or construction of reservoirs, irrigation works, or the making of other permanent improvements upon, of or the benefit of lands held by said pueblo or said Indians.

Approved, June 7, 1924.

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Nos. 91-1179, 91-1346

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

THE PUEBLO OF SANTO DOMINGO,
Petitioner in No. 91-1179,

and

THE UNITED STATES OF AMERICA,
Petitioner in No. 91-1346,

v.

LELAND THOMPSON, JR., *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

CONSOLIDATED BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether section 4 of the Pueblo Lands Act, as amended, precludes the United States and the Pueblo of Santo Domingo from claiming the land at issue in this action, when the Pueblo Lands Board, comprised of representatives of the President, the Attorney General, and the Secretary of the Interior, determined in 1927 that the Pueblo's title to the land was extinguished, and neither the United States nor the Pueblo challenged the Board's action in any forum prior to the filing of this action in 1984?

LIST OF PARTIES TO THE PROCEEDING

Jean Jacques Alexandre, Nathalie Alexandre, Rick E. Allen, Lynn K. Allen, Thomas L. Andrews, Edmund Ball, Virginia Ball, BMP Development Company, Lynne Bundesen, Yolanda M. Carbajal, Estate of Ernest Cummins, Barbara L. Cummins, Cedar Ridge Joint Venture, Charter Bank for Savings, F.S.B. (successor to DeVargas Savings & Loan Bank), Valgene Ebeling, Galisteo Acres Joint Venture, Roger Greenwald, Karl Kernberger, Samuel J. Lemly, OKC Joint Venture, Paper Seventy, Pan Western Life Insurance Company, Robert Taylor, and Mamie Taylor.

The Atchison, Topeka and Santa Fe Railway Company, Cherokee and Pittsburg Coal and Mining Company, Santa Fe Pacific Mining, Inc., Marian Noelke Atcheson, Hal E. Noelke, and PBC Associates.

Public Service Company of New Mexico, Gas Company of New Mexico, and Buena Vista Estates, Inc.

Leland Thompson, Jr., La Bajada Ranch, Los Atrevidos, Caroline Thompson, Julie C. Thompson, Leland C. Thompson, and Warren A. Thompson.

Senator Jeff Bingaman, Anne K. Bingaman, Alice Catron, Thomas B. Catron, III, John S. Catron, Thomas B. Catron, III, Trustee, and Norman K. Toerge.

Sandia Preparatory School.

Sam E. Brown, Billy K. Brown, Jerry J. Brown and Mesita Village, Inc.

Plains Electric Generation and Transmission Cooperative, Inc.

New Mexico State Highway and Transportation Department.

Mary Huber Duncan, Kathryn Collister and the Albuquerque Cerrillos & Coal Company.

George Z. Westrick, Westridge Investments, David H. Orrin, Sr., Bobbie A. Orrin, Eagle Valley Co., Gwendolyn Mauldin, Jemez Corridor, Inc., East Mountain Financial Corporation, Golden Triangle Ranch Corp., James A. Mauldin, Edward M. Fallen, James E. Kirk, LaTierra Buena Corp., LaBolsa Partnership and Golden Triangle Properties.

Marian Silver, Gene Petchecky and Pauline Pollock.

The Pueblo of Santo Domingo.

The United States of America.

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IN THE

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CONSOLIDATED BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court was entered on February 2, 1989 and is reported at 708 F. Supp. 1206. The opinion of the Court of Appeals was entered on August 12, 1991 and is reported at 941 F.2d 1074. The Court of Appeals denied rehearing on October 21, 1991.

STATEMENT

The United States and the Pueblo of Santo Domingo, plaintiffs and appellants below, filed separate petitions for a writ of certiorari seeking review of a decision by the United States Court of Appeals for the Tenth Cir-

cuit affirming a final judgment in favor of respondents.[1] This action was brought in the United States District Court for the District of New Mexico on March 9, 1984 by the United States in its own behalf and on behalf of the Pueblo to eject approximately 200 defendants from roughly 24,000 acres of land located between Albuquerque and Santa Fe in New Mexico.[2] The Pueblo then intervened as a plaintiff, also asserting a right to ejectment as well as trespass damages. Respondents claim title to and currently occupy the land.

The Pueblo traces its alleged title to the disputed land to a grant purportedly made to the Pueblo by the Spanish governor of New Mexico in 1689. This grant was confirmed by Congress in 1858, surveyed by United States Deputy Surveyor Clements in 1859, and patented in 1864.[3]

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[1] Respondents joining in this brief in opposition were granted an extension of time to and including March 18, 1992, for filing a brief in opposition in No. 91-1179, in order to permit them to file a consolidated brief in opposition to both petitions for certiorari. Respondents refer the Court to their application for extension of time, filed on February 6, 1992 in No. 91-1179, for the list of companies required by Rule 29.1.

[2] The Pueblo asserts that the land at issue in this case is "virtually uninhabited scrub land," apparently to imply that the land is of little value to respondents, and consequently that an order ejecting respondents from the land would be of little consequence. *See* Pueblo Pet. at 2. As the pleadings in this case show, respondents include homeowners, ranchers, investors, gas and electric utility companies, the New Mexico state highway department, and The Atchison, Topeka and Santa Fe Railway, all of whom occupy, possess and use the land at issue in connection with their various activities. *See, e.g.*, Amended Complaint ¶ 12, Alexandre Answer to Amended Complaint ¶¶ 11, 13, 29; Public Service Co. of New Mexico Answer to Amended Complaint ¶ 9; Thompson Answer to Complaint ¶¶ 8, 10. Respondents regard the land at issue as valuable property, and do not regard the prospect of being ejected from land that they have possessed for years as inconsequential.

[3] Act of December 22, 1858, ch. 5, 11 Stat. 374; Patent dated November 1, 1864, 3 Gov't C.A. App., Tab C-3. The United States asserts that respondents "conceded" that the Pueblo's purported 1689 grant is prior in time to the 1782 grant upon which respond-

Respondents trace their titles to a Spanish grant made in 1782 known as the Mesita de Juana Lopez grant. In 1872, the Surveyor General of New Mexico recommended congressional confirmation of the Mesita de Juana Lopez grant, stating "I have no doubt of the genuiness [sic] of [the] original papers nor of the honesty and good faith of the parties asking this confirmation." Report No. 64 of the Surveyor General of New Mexico (Nov. 29, 1872), 3 Gov't C.A. App., Tab. D-1. In 1876, United States Deputy Surveyor Reeves surveyed the Mesita de Juana Lopez grant. The survey showed the grant to contain 42,022.85 acres, and was approved by the Surveyor General for New Mexico on February 28, 1877. In 1879, Congress confirmed the Mesita de Juana Lopez grant, specifically recognizing the Reeves survey and its approval by the Surveyor General. Act of January 28, 1879, ch. 31, 20 Stat. 592.

The Reeves survey of the Mesita de Juana Lopez grant overlapped the Clements survey of the Pueblo grant by approximately 4,000 acres. In 1907, the United States resurveyed the Pueblo grant. The 1907 resurvey, con-

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ents base their titles. *See* U.S. Pet. at 10. While respondents do agree that 1689 is prior in time to 1782, respondents do not concede the superiority of the Pueblo's grant. Indeed, respondents allege, as many historians have concluded, that the purported 1689 document granting land to the Pueblo is a forgery dating from the mid-nineteenth century. *See* Affidavit of Dr. Stanley M. Hordes, Exhibits to Joint Memorandum of Defendants in Opposition to Plaintiffs' Cross-Motion for Summary Judgment, Tab H-16 (citing publications by historians regarding 1689 grants). If respondents' allegation is correct, then the Pueblo's prior title in relation to respondents may be limited to the "four square leagues" of land (approximately 17,700 acres) awarded to pueblos by operation of Spanish law, *see* F. Cohen, Handbook of Federal Indian Law 383 (1942 ed.), rather than the 92,000 acres that the Pueblo currently claims under its 1689 grant. If the Pueblo's prior title in relation to respondents is limited to four square leagues, then the Pueblo's prior grant does not overlap respondents' grant. Because the courts below ruled in favor of respondents on the basis of the Pueblo Lands Act, they did not reach the questions raised by the spuriousness of the Pueblo's 1689 grant.

ducted by United States Deputy Surveyor Hall, extended the Pueblo's eastern boundary more than four miles east of the 1859 Clements boundary line, increasing the overlap with the Reeves survey to approximately 24,000 acres. These 24,000 acres of land, included in both the Hall resurvey of the Pueblo of Santo Domingo and the Reeves survey of the Mesita de Juana Lopez grant, constitute the overlap land claimed by petitioners in this action.

Respondents moved for summary judgment in the district court on several grounds. The district court granted respondents' motion on the ground that the Pueblo Lands Act barred the plaintiffs from asserting their claim. The district court did not address the other arguments raised by respondents in support of their motion for summary judgment.[4] On appeal, the United States Court of Appeals for the Tenth Circuit affirmed the district court's ruling, holding that plaintiffs' action was barred by the Pueblo Lands Act.

A. The Pueblo Lands Act of 1924.

A thorough understanding of the Pueblo Lands Act of June 7, 1924, ch. 331, 43 Stat. 636, is crucial to an evaluation of the decision below. From 1848, when New Mexico became part of the United States, until 1913, this Court, as well as lower courts, held that federal laws generally applicable to Indians—including laws regulat-

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[4] In addition to moving for summary judgment on the basis of the Pueblo Lands Act, respondents moved for summary judgment on the grounds that (1) the plaintiffs' claim was barred by the bona fide purchaser doctrine, (2) the Indian Claims Commission Act provided the exclusive remedy for plaintiffs' claim, and (3) the plaintiffs could not claim land that lay outside the boundaries of the Pueblo grant as determined by the survey that accompanied the patent. Also, respondents assert, *inter alia*, that plaintiffs' claim is barred by the federal law of laches and by the 1817 adjudication of the Pueblo's boundaries issued by the Spanish Real Audencia in Guadalajara. *See Pueblo of Santa Ana v. Baca*, 844 F.2d 708, 711-12 (10th Cir. 1988) (affirming district court's decision upholding title based on 1813 adjudication by Spanish Real Audencia). Because the courts below ruled for respondents based on the Pueblo Lands Act, none of these contentions was addressed by the courts below.

ing Indian land transfers—did not apply to the pueblos of New Mexico because of the pueblos' relatively advanced development and because of the status of the pueblos under Mexican law. Relying on these court decisions, residents of New Mexico routinely acquired pueblo land without seeking federal approval. *See Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240-42 (1985). In 1913 this Court reversed its prior view and indicated that federal Indian law applied to the pueblos. *See United States v. Sandoval*, 231 U.S. 28, 38 (1913). To remedy the uncertainty regarding the validity of non-Indian land titles created by the *Sandoval* decision, Congress enacted the Pueblo Lands Act of 1924, which established a procedure for resolving title disputes involving land claimed by pueblos.

The Act created the Pueblo Lands Board, consisting of the Secretary of the Interior, the Attorney General, and a third member appointed by the President. Section 2 of the Act directed the Board to "investigate, determine, and report and set forth by metes and bounds . . . the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico . . . or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act . . . ." Act of June 7, 1924, ch. 331, § 2, 43 Stat. at 636; *see Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 244 (1985).

Once the Board made its report with respect to a particular pueblo, section 3 of the Act provided that:

> the Attorney General shall forthwith cause to be filed in the United States District Court for the District of New Mexico, as provided in section 1 of this Act, a suit to quiet title to the lands described in said report as Indian lands the Indian title to which is determined by said report not to have been extinguished.

Id. § 3, 43 Stat. at 636-67. Section 4 of the Act provided that "[n]othing in this Act contained shall be con-

strued to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction . . . at any time prior to the filing of the field notes and plats as provided in section 13 hereof . . . ." *Id.* § 4(b), 43 Stat. at 637. Section 14 of the Act provided that if the district court in the section 3 action concluded that a non-Indian claimant had established title superior to a pueblo's title based on a Spanish or Mexican grant, the court should not eject the pueblo from possession of the land, but instead should determine the value of the non-Indian interest. The Secretary of the Interior was then to report the court's determination to Congress, presumably so that Congress could purchase the non-Indian interest.

1. *The Pueblo Lands Board determined that the Pueblo's title to the land at issue was extinguished.*

As directed by the Pueblo Lands Act, the Pueblo Lands Board investigated land claims involving the Pueblo of Santo Domingo, and on December 29, 1927, filed its report pursuant to section 2 of the Pueblo Lands Act.[5] The report specifically excluded the Mesita de Juana Lopez grant from the land that the Board found to be Indian land. The report stated:

> Said Board, having investigated the lands within the exterior boundaries of the land lying in the counties of Sandoval (formerly Bernalillo) and Santa Fe, State of New Mexico, confirmed to the Pueblo of Santo Domingo as shown on blue print map hereto attached and marked "Exhibit A," being a Spanish Grant as confirmed by Act of Congress approved December 22, 1858, and patented November 1, 1864, the exterior boundaries of said grant having been corrected by a resurvey made in 1907, has deter-

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[5] Pueblo Lands Board, Santo Domingo Pueblo, Report on Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished (December 29, 1927), 4 Gov't C.A. App., Tab E-1 (hereafter cited as "Lands Board Section 2 Report").

> mined, and hereby determines, that title thereto in said Pueblo has not been extinguished in accordance with the provisions of said Act of June 7, 1924, as to the lands described and set forth by metes and bounds as follows, except certain tracts marked "Exceptions 1 to 36," inclusive, and indicated on blue print map hereto attached and marked "Exhibit B", and *except the lands over-lapped by the La Majada, Sitio de Juana Lopez and Mesita de Juana Lopez grants shown on blue print map hereto attached and marked "Exhibit A"* . . . .

Lands Board Section 2 Report at 1-2 (emphasis added).

The blue print map marked "Exhibit A" showed the boundaries of the Pueblo. In the lower corner of the map the Board wrote in bold letters with red pencil: "Note: red line indicates exterior boundaries as confirmed by Board." A thick red pencil line was drawn around the exterior boundaries of the Pueblo grant on three sides, but on the east the line stopped at the intersection of the Pueblo grant and the Mesita de Juana Lopez grant. At that point, the red pencil line continued along the western boundary of the Mesita de Juana Lopez grant, showing the eastern boundary of the Pueblo to be coterminous with the western boundary of the Mesita de Juana Lopez grant. 4 Gov't C.A. App., Tab E-13.

Herbert J. Hagerman, the Secretary of the Interior's representative on the Board, sent copies of the Board's section 2 report to the Secretary of the Interior together with a transmittal letter that described the report. Hagerman explained the Board's determination that the Pueblo had no right to the land claimed by plaintiffs in this suit:

> The [Pueblo's] grant was confirmed by Congress on December 22, 1858, and patented on November 1, 1864. There was a resurvey in 1907, made upon the suggestion of the then representative of the Northern Pueblos, which resurvey, we understand, was accepted by the General Land Office. The resurvey included 37,971.45 acres in conflict with the Mesita de Juana Lopez grant, and 4,592.61 acres in conflict

> with the La Majada grant. *The Board, after full investigation, found that the Indians are not entitled to the areas included in these conflicts, and so report.*

Letter from Herbert J. Hagerman to the Secretary of the Interior, dated December 27, 1927 (emphasis added), 4 Gov't C.A. App., Tab E-5.[6]

2. *The United States did not claim the land at issue in the quiet title suit filed pursuant to section 3 of the Act.*

On February 1, 1928, the United States filed the suit required by section 3 of the Pueblo Lands Act to quiet title to the land that the Board had found remained in the Pueblo of Santo Domingo. This action was styled *United States v. Montoya.* The United States clearly recognized that the Board ruled against the Pueblo's claim to the land at issue in this action when it filed the quiet title suit on behalf of the Pueblo required by section 3 of the Pueblo Lands Act. Complaint, *United States v. Montoya*, No. 1830 In Equity (D.N.M. 1928), 4 Gov't C.A. App., Tab E-6. In paragraph 5 of the complaint in *Montoya*, the United States asserted that the "Pueblo Lands Board . . . has determined that the Indian title to certain portions [of the Santo Domingo grant] now vests in various owners other than said Pueblo" and then listed the "portions of said Santo Domingo Grant overlapped by . . . the Mesita de Juana Lopez grant" as among the land vested in other owners. Paragraph 5 also stated that "said grant conflicts [*i.e.*, the alleged overlap between the Pueblo grant and the La Majada grant, the Sitio de Juana Lopez grant, and the Mesita de Juana Lopez grant] are not involved in this suit and no relief is here asked as to the

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[6] In its petition the United States comments that the Board "did not find that overlap claimants attained adverse possession," U.S. Pet. at 17 n.12, implying that the Board did make such findings with respect to other claimants. In fact, the Board did not enter such "findings" with respect to any claimant, *see* Lands Board Section 2 Report, nor did the Board routinely explain the basis for its determinations.

land included therein."[7] On April 25, 1929, the District Court entered its final decree in *Montoya. United States v. Montoya,* No. 1830 in Equity (D.N.M. April 25, 1929) (final decree), 4 Gov't C.A. App., Tab E-7. Since the complaint had specifically described the land claimed for the Pueblo as excluding the land at issue in this suit, the land at issue was not part of the land that the court confirmed to the Pueblo.

B. The 1933 Amendments to the Pueblo Lands Act.

Because the pueblos were dissatisfied with the amount of compensation awarded to them by the Pueblo Lands Board, in 1933 Congress provided additional compensation to the Pueblos. Act of May 31, 1933, ch. 45, 48 Stat. 108 (the "1933 Act"). Section 6 of the 1933 Act provided that each pueblo could elect either to waive any proceedings under section 4 of the 1924 Act to establish its title to land and accept the additional compensation provided by the 1933 Act, or to pursue an action under section 4, provided that the action were filed within one year after enactment of the 1933 Act. On November 7, 1933, the Pueblo of Santo Domingo executed the agreement provided for in section 6 of the 1933 Amendments to the Pueblo Lands Act, and thereby surrendered its right to bring any future actions under section 4 of the Pueblo Lands Act. 3 Gov't C.A. App., Tab B-2. In any event, the Pueblo did not file any action to establish its title to the land at issue in this case prior to one year after enactment of the 1933 Act. Neither the United States nor the Pueblo filed any action asserting a claim to the land at issue in this case from the time the Pueblo Lands Board issued its report in 1927 until the filing of this action in 1984.

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[7] The *Montoya* complaint contained several other statements making it clear that the United States did not claim the land overlapped by the Mesita de Juana Lopez grant. *See* Paragraphs 6, 7, and 8, Complaint, *United States v. Montoya,* No. 1830 In Equity (D.N.M. 1928), 4 Gov't C.A. App., Tab E-6.

SUMMARY OF ARGUMENT

None of the considerations that are set out in Rule 10 of the Court's rules as justifying a grant of certiorari is present in this case. In particular, there is no conflict between the decision below and applicable decisions of this Court. The decision below is consistent with the general rule that the United States is not bound by statutes of limitations unless Congress clearly manifested its intention that the United States be bound, and with cases holding that the United States sues its own right when it sues on behalf of Indian tribes. Nor does the decision below present a question of federal law deserving the Court's attention. The issue presented by this case is narrow and unlikely to recur. Finally, there is no substantial public interest favoring review. Therefore, the petitions for a writ of certiorari should be denied.

ARGUMENT

I. THERE IS NO CONFLICT BETWEEN THE DECISION BELOW AND APPLICABLE DECISIONS OF THIS COURT.

A. The Decision Below Is Consistent With the General Rule that the United States Is Not Bound By Statutes of Limitations Unless Congress Clearly Manifested Its Intention that the United States Be Bound.

Petitioners assert that the decision below conflicts with decisions of this Court standing for the proposition that "the United States, asserting rights vested in it as a sovereign government, is not bound by any statute of limitations, unless Congress has clearly manifested its intention that it should be so bound." *E.g.*, *United States v. Nashville Railway*, 118 U.S. 120, 125 (1886); *United States v. Insley*, 130 U.S. 263, 266 (1889); *see* Pueblo Pet. at 11; U.S. Pet. at 11 & n.9. In fact, there is no such conflict, because the court of appeals below was faithful to this principle. The court of appeals cited *Nashville Railway* as the governing standard, 941 F.2d at

1080-81, U.S. Pet. App. 16a, but determined, after carefully analyzing the Act, that Congress did "manifest its intention" that the United States, as well as the Pueblo, be precluded from asserting the type of claim raised in this case. "Congress intended the federal government, *in a case like this*, to be subject to the same statute of repose that operates against the Pueblo." 941 F.2d at 1081, U.S. Pet. App. 16a (emphasis added). While the petitioners dispute this conclusion regarding Congress's intent, that is not a sufficient reason for this Court to grant certiorari.

The court below applied the proper techniques of statutory construction when it determined that Congress intended the United States as well as the Pueblo to be bound by the statute of limitations in section 4. This Court has directed that: "In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole, and to its object and policy." *Crandon v. United States*, 494 U.S. 152 (1990); *accord Massachusetts v. Morash*, 490 U.S. 107, 114-15 (1989); *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 51 (1987); *see Sullivan v. Everhart*, 494 U.S. 83 (1990) (challenge to agency interpretation) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole."); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (same). This Court has repeatedly emphasized the need to consider a statute's object and policy in order to determine congressional intent:

> Of course, the "starting point in every case involving construction of a statute is the language itself." [Citation omitted.] But the text is only the starting point. As Justice O'Connor explained last term, " ' "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." ' " Offshore Logistics Inc. v. Tallentire, 477 U.S. 207, 222 (1986) (quoting Mastro

> Plastics Corp. v. NLRB, 350 U.S. 270, 285, (1956) (in turn quoting United States v. Heirs of Boisdore, 8 How. 113, 122 (1849))).

Kelly v. Robinson, 479 U.S. 36, 43 (1986); *accord*, *Dole v. United Steelworkers of America*, 494 U.S. 26 (1990).

That is precisely the analysis followed by the court below. Respondents' brief in opposition is not the proper place to review all of the authority that supports the judgment of the court below that the United States and the Pueblo are barred from bringing this action. The briefs filed below extensively discussed the relevant provisions of the Act, its legislative history, and the contemporaneous interpretations of the officials charged with administering the Act. It is apparent from the court's opinion that the court below carefully reviewed these materials in reaching its holding. In doing so, the court below faithfully applied the precedents of this Court to determine Congress's intent.

For example, the court below recognized that the object of the Act was to resolve the complicated title questions that had arisen with respect to pueblo land in New Mexico. 941 F.2d at 1078-79, U.S. Pet. App. 9a-10a; *see, e.g.*, *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240 (1985). This object was repeatedly emphasized in legislative committee reports, hearings, floor debates, and in the Act itself. For example, House Report No. 1730, 67th Cong., 4th Sess. 1 (1923) stated that the purpose of the Pueblo Lands Act was "to ascertain and settle the title to lands and waters in New Mexico belonging to the Pueblo Indians" and to provide "an exclusive forum wherein all controversies as to the rights of the Pueblo Indians may be adjudicated." Senate Report No. 492, 68th Cong., 1st Sess. 3 (1924), stated: "This bill is an effort to provide for the final adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claimed

by the Pueblo Indians of New Mexico." [8] The court below considered these materials extensively in construing the relevant sections of the Act. *See* 941 F.2d at 1078-79, U.S. Pet. App. 9a-11a.

The court of appeals also carefully considered the structure of the Act. The Act established an elaborate structure for ascertaining the ownership of land claimed by both non-Indians and pueblos in order to accomplish the congressional objective to resolve the titles to such land. As described in the Statement above, the Act created the Pueblo Lands Board, consisting of the Secretary of the Interior, the Attorney General, and a third member appointed by the President, and directed the Board to determine whether a pueblo's title to land within its grant had been extinguished. Act of June 7, 1924, ch. 331, § 2, 43 Stat. at 636; *see Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 244 (1985). Any decision by the Board holding that pueblo title to land was extinguished had to be unanimous. Act of June 7, 1924, ch. 331, § 2, 43 Stat. at 636-67. Under the procedure established by the Act, once the Board determined that a pueblo's title to a particular parcel of land had been extinguished, that was the end of the matter unless the pueblo elected to negate the Board's determination by filing an independent action as provided in section 4 of the Act.[9] If the Board determined that a pueblo's title

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[8] *Accord* H.R. Rep. No. 787, 68th Cong., 1st Sess. 4 (1924); S. Rep. No. 492, 68th Cong., 1st Sess. 5 (1924); S. Rep. No. 1175, 67th Cong., 4th Sess. 3 (1923); H.R. Rep. No. 1748, 67th Cong., 4th Sess. (1923); H.R. Rep. No. 1730, 67th Cong., 4th Sess. 6 (1923).

[9] This view of section 4 was the view held by the Secretary of the Interior at the time of the Pueblo Lands Board's deliberations. The Secretary of the Interior explained the operation of section 4 in a letter to the Chairman of the Senate Committee on Indian Affairs. The letter stated:

> A board called the Pueblo Lands Board was created by the act, charged with the administration of the fundamental parts of the act. *Its findings with respect to title, if adverse to the*

to a particular parcel of land had not been extinguished, then the Act directed the United States to sue to quiet the pueblo's title to the land as provided by section 3 of the Act. Non-Indian claimants whose claims had been rejected by the Board could reassert their claims in the quiet title action. Ultimately, of course, the district court would rule either in favor of the pueblo or the non-Indian claimant with respect to all of the land involved in the section 3 quiet title suit. *See* Act of June 7, 1924, ch. 331, §§ 2, 3, 43 Stat. at 636.

The interaction between sections 2 and 3 of the Act ensured that title to all of the land located within the exterior boundaries of a pueblo grant would be confirmed in either the pueblo or a non-Indian landholder. There was no provision in the Act for title to land within the

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> *Pueblos, would become irrevocable in the event that the Pueblos elected not to make use of an authority, conveyed by the act, to institute independent suits*, unaffected by the terms or limitations of the act, which suits would be equivalent to a rejection by the Pueblos of such of the findings by the Board, respecting title or eligibility thereto, as might be brought into contest through such independent suits.

S. Rep. No. 73, 73d Cong., 1st Sess. 15 (1933) (emphasis added) (Letter from the Secretary of the Interior to the Chairman of the Senate Committee on Indian Affairs, expressly incorporated by the Senate Committee in its report). In its previous consideration of the Pueblo Lands Act, this Court noted that the "uniform contemporaneous view of the Executive Officer responsible for administering the statute . . . is entitled to very great respect. These individuals were far more likely to have had an understanding of the actual intent of Congress than judges who must consider the legal implications of the transaction over half a century after it occurred." *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 254-55 (1985); *see Andrus v. Shell Oil Co.*, 446 U.S. 657, 667-68 (1980) (deferring to the "contemporaneous construction of the statute by the men charged with the responsibility of setting its machinery in motion."). Such deference is especially important when grantees and third parties have relied on the administrative interpretations in connection with titles to real property. *See McLaren v. Fleischer*, 256 U.S. 477, 480-81 (1921); *United States v. The Burlington & Missouri River Railroad Co.*, 98 U.S. 334, 341 (1879).

exterior boundaries of pueblo grants to remain unresolved. Either the Board reported the pueblo title as extinguished and confirmed the land in the non-Indian landholder, or the Board determined that the pueblo title was not extinguished, in which case the land became the subject of a section 3 quiet title action.[10] The Act did not provide a third option that would somehow permit the Board to determine that a pueblo's title was not extinguished but would also permit the United States to refrain from including the land in the quiet title action mandated by section 3 of the Act. The court of appeals below properly reviewed and relied on this structure to determine Congress's intent.

The court below also relied on Congress's reaffirmation of its purpose to resolve the titles to land claimed by both non-Indians and pueblos expressed in the 1933 amendments to the Pueblo Lands Act. As the court below concluded, "[i]f we had any doubt concerning applying a limitations period to the Pueblo, it was erased by the subsequent amendment of the PLA." 941 F.2d at 1079, U.S. Pet. App. at 11a. The 1933 amendments to the Pueblo Lands Act modified the period provided in section 4 for a pueblo to bring an action in federal district court to assert claims to land. Originally, section 4 limited such claims by requiring that they be asserted "at any time prior to the filing of the field notes and plats as provided in section 13" of the Act. In the 1933 Act, Congress amended section 4 of the Act to change the limitations period from the period prior to the filing of the section 13 plats to one year after the enactment of the 1933 Act. Act of May 31, 1933, ch. 45, § 6, 48 Stat. 108, 110-11.

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[10] The United States is being disingenuous when it states that the Board "merely declined to confirm" the Pueblo's title. *See* U.S. Pet. at 18. The Act did not give the Board the option of "merely declining to confirm," and the Board's report and accompanying materials described in the Statement above show that the Board expressly determined that the Pueblo's title to the overlap land was extinguished. *See* p. 6, *supra*.

The 1933 Act demonstrated yet again that Congress intended to limit the time for asserting pueblo land claims. Section 6 of the 1933 Act provided that a pueblo

> may elect to accept the appropriations herein authorized, in the sums herein set forth, in full discharge of all claims to compensation under the terms of said Act, notifying the Secretary of the Interior in writing of its election so to do: *Provided*, That if said election by said pueblo be not made, said pueblo shall have one year from the date of the approval of this Act within which to file any independent suit authorized under section 4 of the Act of June 7, 1924, at the expiration of which period the right to file such suit shall expire by limitation . . . .

Id. The purpose of section 6 was explained as follows:

> Section 6 provides for election by the Pueblos as to whether they will accept the amended compensation totals as in final settlement, or will reject the settlement through independent suits. If no election be made within 1 year after approval of the act, the right to file such independent suits shall expire by limitation. *Thus, litigations and pending and potential litigations, affecting the ownership of these Pueblo lands, will be forever ended.*

S. Rep. No. 73, 73d Cong., 1st Sess. 17 (1933) (Letter from the Secretary of the Interior to the Chairman of the Senate Committee on Indian Affairs, expressly incorporated by the Senate committee in its report) (emphasis added); *accord id.* at 3 (Committee recommends passage of 1933 Act so that "the purposes of the act of June 7, 1924 may be fulfilled and the troublesome question of land titles and right of possession to such lands and appurtenant water rights may be finally disposed of without protracted delays."). The court of appeals below properly relied on the 1933 amendments to section 4 of the Pueblo Lands Act to determine Congress's intent.

In sum, a review of the decision by the court below demonstrates that the court's approach did not conflict

with the governing precedents. The court below reviewed the language of the Act, its structure, and its object and policy, as well as its legislative history and the 1933 amendments to the Act, to determine that Congress manifested an intention to bar both the United States and Pueblo from asserting this action. This method of analysis is consistent with the precedents of this Court regarding the application of statutes of limitations to the United States.

Much of petitioners' argument is not directed to showing that the decision below conflicts with precedents of this Court, but rather to show that the decision of the court below was incorrect. In so doing, the petitioners rehash the arguments that were made to, and rejected by, the court below. As this Court has emphasized, the fact that a case may have been incorrectly decided is not by itself a sufficient reason for this Court to grant certiorari. *See Ross v. Moffitt*, 417 U.S. 600, 616-17 (1974). In any event, the court below was correct in rejecting these arguments.

To appreciate the correctness of the court's holding, it is necessary to recall how the Act operated. Both the Attorney General and the Secretary of the Interior were members of the Pueblo Lands Board. A unanimous decision of the Board was required in order for the Board to determine that a pueblo's title to land was extinguished. If the members of the Board did not conclude unanimously that a pueblo's title was extinguished, then the Board reported the title as "not extinguished," and the Attorney General included the land in the quiet title action brought pursuant to section 3 of the Act.

The interaction between section 2 and section 3 of the Act provided the United States with the opportunity to assert any claim to land within the exterior boundaries of the pueblo grants that it desired to assert. Both the Attorney General and the Secretary of the Interior, the only officials of the United States who would have the authority to assert such a claim on behalf of the United

States, were members of the Pueblo Lands Board. Their judgment regarding the validity of a pueblo's title was embodied in the Board's section 2 report. If either of them was of the opinion that a pueblo's title was not extinguished, then the section 2 report would have stated that the pueblo's title was not extinguished, and the land would have been included by the Attorney General in the quiet title action filed pursuant to section 3 of the Act. If both the Attorney General and the Secretary of the Interior concluded that a pueblo's title was extinguished, and the third member of the Board agreed, then that conclusion would also have been stated in the Board's section 2 report. Permitting the Attorney General, on behalf of the United States, to maintain a suit asserting title to pueblo land despite a determination by the Board that a pueblo's title was extinguished would allow the Attorney General to contradict his own prior determination and that of the Secretary of the Interior. There is nothing in the Act to indicate that Congress intended to permit the Attorney General to overrule himself in this fashion. The only suits by the United States authorized by the Act were suits under section 3 to quiet title to lands for which pueblo title was found not to have been extinguished.[11]

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[11] The force of this argument is not diminished by the fact that the Attorney General and the Secretary of the Interior performed their function as members of the Board through subordinate officials. It is well understood that such officials perform their functions through subordinates. The orders empowering the offices of the Secretary of the Interior and the Attorney General clearly contemplate and encourage such delegation. *See* 28 U.S.C. §§ 504-07 (1988) (appointments of personnel to assist Attorney General); Exec. Order No. 10250, 16 Fed. Reg. 5385 (1951), *reprinted in* 3 U.S.C. § 301 (1988) (Secretary of the Interior); Exec. Order No. 10950, 26 Fed. Reg. 5787 (1961), *reprinted in* 3 U.S.C. § 301 (1988) (Secretary of the Interior). This Court also clearly expects these officials to act through their subordinates and expects the actions of such subordinates to have the same effect as personal action by the official. *See, e.g., Kimm v. Rosenberg*, 363 U.S. 405, 408 (1960); *Jay v. Boyd*, 351 U.S. 345, 351 n.8 (1956); *Miller v. Mayor, Alderman, and Commonality of New York*, 109 U.S. 385, 394 (1883).

Because the Act operated in this way, it is both unnecessary and illogical to permit the United States to bring a claim once a pueblo is barred by section 4 from asserting it. Permitting the United States to assert such a claim in effect allows subsequent administrations, and subsequent Attorneys General, to second-guess the decisions made by their predecessors. Congress did not intend the Pueblo Lands Act to allow this type of Monday-morning quarterbacking, particularly when it occurs more than 50 years after the game was played.[12] The Attorney General and the Secretary of the Interior had the opportunity to call the play in 1927, and they determined that the Pueblo's title was extinguished. Their successors may not replay the game now by asserting that the Board's 1927 decision was flawed.

For the same reason, the argument that the failure to file a plat and field notes pursuant to section 13 of the

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[12] Because the United States determined that the Pueblo's title to the overlap land was extinguished, the United States did not name respondents' predecessors in title as defendants in the quiet title action filed in 1928 pursuant to section 3 of the Act. Nevertheless, the same considerations that led this Court to invoke res judicata to bar an action by the United States against non-party water users in *Nevada v. United States*, 463 U.S. 110, 143-44 (1983) apply to this case as well. Here, as in *Nevada*, an in personam equitable quiet title action was viewed as a "comprehensive adjudication of . . . rights intended to settle once and for all the question" of entitlement to the property rights at issue. *See id.* at 143. Here, as in *Nevada*, "Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change." *Id.* at 129 n.10 (quoting Minnesota Co. v. National Co., 70 U.S. (3 Wall.) 332 (1865)); *see Arizona v. California*, 460 U.S. 605, 620 (1983) ("Our reports are replete with reaffirmations that questions affecting titles to land, once decided, should no longer be considered open."); *United States v. Title Insurance & Trust Co.*, 265 U.S. 472, 485-86 (1924). If the United States thought the Pueblo was entitled to the land at issue in this case in 1928 when the *Montoya* case was filed, it could have—and should have—sued to recover the land then.

Act somehow preserves this claim is fatally flawed. *See* U.S. Pet. at 16. As was just discussed, the Secretary of the Interior was a member of the Pueblo Lands Board, and thus responsible for determining whether a pueblo's title was extinguished. Because the Act required the Board's determination of extinguishment to be unanimous, the Secretary necessarily had joined in any such determination. Consequently, there was no reason—and nothing in the Act to suggest—that Congress intended section 13 to give the Secretary a second, unilateral, opportunity to reverse a determination of extinguishment in which he had already joined. Indeed, allowing the Secretary to do so would produce serious difficulties in implementing the Act. The section 3 quiet title action, intended to include all the land as to which a pueblo's title was unextinguished, would probably have been completed, or at the very least substantially advanced, before the time for filing a plat under section 13 had passed.[13] Consequently, the section 3 quiet title suit would be completed before it became apparent that the Secretary was unilaterally "reversing" the Board by refusing to file the section 13 plat, and it would be too late to include the additional land in the section 3 suit. Similarly, other duties of the Board, such as preparing the reports required by sections 6 and 7 of the Act, could have been completed before it became known that the Secretary was "reversing" the Board. It was precisely these sorts of considerations that made it clear to the court below that Congress intended the United States, as well as the Pueblo, to be barred from asserting claims once the section 4 limitations period had run.

Perhaps the most powerful illustration of the mischief that could arise under the United States' interpretation of section 13—and why Congress did not intend section

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[13] This was certainly true with respect to the Pueblo of Santo Domingo, where the final decree in the *Montoya* case was entered on April 25, 1929, less than two years after the Board filed its section 2 report on December 29, 1927. *Compare* 4 Gov't C.A. App., Tab E-7 *with id.*, Tab E-1.

13 to permit the Secretary to reverse the Board's finding of extinguishment unilaterally—is this very lawsuit. Under the United States' interpretation of section 13, the United States could simply fail to file the plat and then delay for decades, doing nothing, while title to the Pueblo's land remained unresolved.[14] If there is anything that the Pueblo Lands Act teaches, it is that Congress did not intend to allow such claims to fester—Congress intended that these claims be resolved during the time the Act was being implemented. It is inconceivable that Congress created in section 13 an escape hatch allowing the United States to postpone the resolution of such a claim for 60 years.

Faced with this overwhelming evidence that the Board determined that the Pueblo's title to the land at issue in this case was extinguished, that the United States deliberately chose not to claim the land in the section 3 quiet title action, and that the Act was intended to resolve claims of title to land within the boundaries of the Pueblo grants, the court of appeals correctly concluded that this action was barred.

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[14] There is no evidence to suggest that the Secretary failed to file the plat in the 1930's because he disagreed with the Board's determination. In a comprehensive report entitled, "Pueblo of Santo Domingo Land Status," issued by the United States Department of the Interior in 1940, the Department stated:

> The [Pueblo of Santo Domingo] grant, as set forth by the Joy survey, was in conflict with the La Majada, Sitio de Juana Lopez, and Mesita de Juana Lopez grants. Including the conflicts, it contained approximately 92,000 acres. The Pueblo Lands Board, in adjudicating the overlaps, ruled against the Pueblo, and thereby reduced the gross area of the grant to 65,931.20 acres.

U.S. Department of the Interior, Pueblo of Santo Domingo Land Status (April 1, 1940) at 23, 4 Gov't C.A. App., Tab G-1. This Department of the Interior report belies the contention that the Secretary refused to file the plat because he disagreed with the Board's determination. The interpretation of section 13 advanced by the United States in its petition is a recently developed argument devised to avoid the consequences of the actions taken by the United States in the 1920's and 1930's.

B. The Decision Below Does Not Conflict With Cases Holding that the United States Sues in Its Own Right When It Sues on Behalf of Indian Tribes.

Petitioners also argue that the decision below conflicts with decisions of this Court standing generally for the proposition that when the United States sues to enforce Indian rights, it sues in its own right as sovereign as well as a trustee on behalf of its Indian ward. *See* U.S. Pet. at 14-15; Pueblo Pet. at 11-13. Again, petitioners are mistaken. The court of appeals below did not question this general principle, and had no need to. Instead, the court's holding is limited to the context of the Pueblo Lands Act as it applies to this case. In that unique context, for the reasons already discussed above, the court below concluded that Congress intended to preclude the United States from asserting this type of claim on behalf of a pueblo when the pueblo itself was barred.[15]

None of the cases cited by petitioners involves the issue presented by this case, in which Congress enacted a statute specifically intended to resolve a particular type of Indian claim, containing an elaborate procedure designed to address the claims and a statute of limitations clearly intended to bar such claims when the limitations period had run. Rather, the cases cited by petitioners involve situations in which generally applicable doctrines of limitations or repose, such as sovereign immunity or res judicata, precluded suit by an individual Indian or tribe

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[15] The United States is also precluded from asserting this claim in its own capacity by the language of the Act of January 28, 1879, the act by which Congress confirmed the Mesita de Juana Lopez grant. After confirming the Mesita de Juana Lopez grant, the act provided: "That the foregoing confirmation shall only be construed as a quit claim or relinquishment of all title or claim on the part of the United States in and to said Private Land Claim, and shall not affect the adverse rights of any person or persons to the same." Act of January 28, 1879, ch. 31, 20 Stat. 592. While this language preserved the "adverse rights" of third persons, including the Pueblo, to the land encompassed by the grant, it prevents the United States from making any claim to the land in its own right.

and were alleged to bar suit by the United States on behalf of the Indian as well. *See United States v. Hellard*, 322 U.S. 363, 364 (1944) (action allegedly barred where Congress authorized state courts to exercise jurisdiction over cases involving Indians provided that the United States was made a party to the proceeding); *United States v. Minnesota*, 270 U.S. 181, 195 (1926) (action allegedly barred by a state's sovereign immunity); *Privett v. United States*, 256 U.S. 201, 204 (1921) (action allegedly barred by res judicata based on a court proceeding to which the United States was not a party).

This is equally true of the decision in *United States v. Candelaria*, 271 U.S. 432 (1926), an action that did involve a pueblo, but in a situation quite unlike the one presented by this case. *Candelaria* involved a quiet title action brought by a pueblo in 1910, prior to the Pueblo Lands Act. The United States was not involved in the action, and the pueblo litigated the action and lost. When the United States brought a subsequent action on behalf of the pueblo in 1922, the defendants interposed a res judicata defense, based on the pueblo's prior action. This Court determined that the United States could maintain its action despite the pueblo's prior suit.

This case is much different from *Candelaria* because of the impact of the Pueblo Lands Act. Respondents have already discussed the structure of the Act, showing how the United States, through the Pueblo Lands Board, determined that the Pueblo's title to the land at issue was extinguished, and how the United States, through the Attorney General, reaffirmed the Board's ruling in the complaint filed in the quiet title action mandated by section 3 of the Act. Respondents have also discussed the materials demonstrating that Congress intended both the United States and the Pueblo to be barred from asserting this type of action after the expiration of the limitations period established by section 4 of the Act. These factors distinguish the case at bar from *Candelaria*.

Indeed, the case that most closely parallels the case at bar is not *Candelaria*, but *United States v. Title Insurance & Trust Co.*, 265 U.S. 472 (1924). That decision held that the United States was precluded from asserting a land claim on behalf of the Tejon Indians of California because the tribe had failed to present its claim within the time period established by the Act of March 3, 1851, ch. 41, 9 Stat. 631. The Court had previously held that the procedure established by the 1851 Act applied to Indian tribes. *See Barker v. Harvey*, 181 U.S. 481 (1901). The 1851 Act did not expressly state that the United States was barred from bringing suit on behalf of a tribe that had failed to present its claim within the specified time, yet the Court reaffirmed its prior holding in *Barker v. Harvey* and determined that Congress intended an action filed by the United States on behalf of an Indian tribe to be barred. 265 U.S. at 485-86.

In the context of the Pueblo Lands Act, the court below's holding is both reasonable and correct. In light of Congress's intent that litigation regarding pueblo title was to be "forever ended" by the Pueblo Lands Act, the court below properly concluded that once a pueblo was barred by section 4, the United States was not able to assert title in its own right to land for which the Board had ruled the pueblo's title was extinguished.[16]

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[16] When Congress passed the Pueblo Lands Act, it was concerned not only with suits by a pueblo to eject non-Indian landowners, but with suits brought by the United States. This Court quoted testimony by R.E. Twitchell, Special Assistant to the Attorney General, before a congressional committee reviewing the legislation that became the Pueblo Lands Act in which Twitchell emphasized: "The fact that the United States may . . . at any time in the future take steps to oust persons in possession of lands within these Pueblo grants, and the continuing uncertainty as to title, has cast a cloud on all lands held by white people within the Pueblo areas. . . ." *See Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 243 n.15 (1985) (quoting Hearings on S. 3865 and S. 4223 before the Subcommittee Considering Bills Relative to the Pueblo Indian Lands

II. THE DECISION BELOW DOES NOT PRESENT A QUESTION OF FEDERAL LAW DESERVING THE COURT'S ATTENTION.

A. The Precise Issue Presented by this Case Is Unlikely to Recur.

Petitioners' next contention is that the decision below presents an important question of federal law deserving this Court's attention. The issue presented by this case, however, is a narrow one—whether section 4 of the Pueblo Lands Act bars the United States as well as a pueblo from asserting an untimely claim to land when the Pueblo Lands Board has ruled that the pueblo's title to that land is extinguished. There appear to be few, if any, circumstances in which this issue can arise in future litigation. First, the Pueblo Lands Act applied only to the pueblos of New Mexico—20 in number. *See Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240 n.5 (1985). Secondly, the Pueblo Lands Board apparently ruled that pueblo title was not extinguished in overlaps involving other pueblos, making it unlikely that the ruling below will be relevant to claims on behalf of other pueblos.[17] Thus it appears likely that the decision below is relevant only to claims on behalf of the Pueblo of Santo Domingo, and even there it is uncertain whether the Pueblo has any such additional claims.[18] Therefore,

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of the Senate Committee on Public Lands and Surveys, 67th Cong., 4th Sess. 51 (1923)). An interpretation of the Act that bars this suit by the Pueblo but permits the United States to bring the identical claim would produce exactly the situation the Act was intended to remedy.

[17] Petitioners stated in their pleadings below that in no other instance did the Board rule against a pueblo with respect to a grant overlap. *See* Plaintiffs' Cross Motion for Summary Judgment at 66 n.28.

[18] The Pueblo Lands Board ruled that the Pueblo's title was extinguished with respect to lands overlapped by the La Majada, Sitio de Juana Lopez, and Mesita de Juana Lopez grants. Therefore at most the United States could assert a similar claim on behalf of

the issue presented by this case is unlikely to have any impact beyond a few cases at most, and is not sufficiently important to warrant this Court's attention.

Nor does the public interest favor granting the writ in this case. The United States is seeking to escape the consequences of a decision that it made 60 years ago when its representatives, in the exercise of their statutory authority, unanimously determined that the Pueblo's title to the land at issue was extinguished. Other responsible officials of the United States, including the Secretary of the Interior, accepted that determination as correct. Now the present officials of the United States have concluded that their predecessors erred. Assuming for the sake of argument that the United States did err when it extinguished the Pueblo's title in the 1920's, the appropriate remedy for that error is not to dispossess innocent private landowners who have acted in reliance on a decision that has gone unchallenged for decades. Instead, the appropriate relief is for the United States to compensate the Pueblo for the breach of fiduciary duty by the United States. This is precisely the relief available through the Indian Claims Commission in a proceeding brought against the United States, whose representatives committed the error challenged in this case. The Pueblo commenced such a proceeding, *see Pueblo of Santo Domingo v. United States*, Dkt 355 (Ind. Cl. Comm.), 4 Gov't C.A. App., Tab G-2, and included in that proceeding a claim for compensation as a result of the actions of the United States in connection with the overlap land.[19]

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the Pueblo for the land overlapped by those two grants. The United States purchased the La Majada grant in the 1930's, however, and the grant is now part of the Santa Fe National Forest. *See* Plaintiffs' Joint Memorandum in Reply to Defendants' Opposition to Cross-Motion for Summary Judgment at 77 n.36. Consequently, if the United States believes that the Pueblo is the true owner of the La Majada grant, it can simply hold title to that grant in trust for the Pueblo.

[19] Ironically, in a filing before the Indian Claims Commission, the United States maintained that there was "no question" that the

Subsequently, however, the Pueblo requested the Indian Claims Commission, and its successor, the U.S. Claims Court, to defer any ruling on its claim, presumably to preclude respondents from invoking a defense to the present suit based on the resolution of that action. *See United States v. Dann*, 470 U.S. 39 (1985) (tribe barred from claiming title to land after final award by Indian Claims Commission); *Western Shoshone National Council v. Molini*, 951 F.2d 200 (9th Cir. 1991) (same). The Indian Claims Commission remedy—not the present action—remains the remedy that best accords with the public interest.

B. This Case Does Not Present An Appropriate Opportunity to Consider the Issues Raised By the Pueblo.

Perhaps recognizing that the issue presented by this case is not sufficiently important to justify the Court's attention, the Pueblo has identified two broad questions "of great importance in the field of Indian law" and urges the Court to use this case as an opportunity to address these broad questions. *See* Pueblo Pet. at 10. While the Pueblo has certainly succeeded in identifying broad questions, the Pueblo has not adequately explained why these issues need to be addressed at this particular time or why this litigation is particularly appropriate as a vehicle for addressing these issues. Contrary to the Pueblo's contention, these issues do not need to be addressed, and in any event this case does not present a suitable opportunity to address them.

First, the Pueblo would have the Court use this case as an opportunity "to consider the role of the United States as trustee of Indian rights." The concept of the United States as guardian or trustee of Indian rights is

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Pueblo Lands Board had jurisdiction to extinguish the Pueblo's title to the land overlapped by the Mesita de Juana Lopez Grant. *Pueblo of Santo Domingo v. United States*, Dkt 355 (Ind. Cl. Comm.), Response of United States to Plaintiff's Motion for Summary Judgment (filed Aug. 24, 1976) at 9, 4 Gov't C.A. App., Tab G-3.

well established in federal law and has been ever since Chief Justice Marshall in his landmark opinion in *Cherokee Nation v. Georgia* analogized the relationship of Indian tribes to the United States as that of a ward to its guardian. *See Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17-18 (1831). Numerous decisions of this Court in the ensuing 160 years have considered the role of the United States as trustee of Indian rights. *See, e.g., Nevada v. United States*, 463 U.S. 110, 142 (1983) (analysis of duty of United States to Indian tribe and other duties imposed on United States by Congress); *United States v. Mitchell*, 463 U.S. 206, 225-26 (1983) (analysis of general trust relationship between United States and Indians and fiduciary duty imposed on United States by General Allotment Act); *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942) (analysis of trust obligations imposed on United States when carrying out obligations contained in Indian treaties). There is no need for the Court to replow that ground now.

Even if there were a need for this Court to address once more the relationship between the United States and Indian tribes, this case does not present a suitable opportunity to explore "the role of the United States as trustee of Indian tribes." The Pueblo Lands Act established a unique procedure to resolve a particular situation regarding pueblo land titles brought about by this Court's ruling that pueblo members were not Indians within the meaning of federal law. Consequently, any attempt to explore the trustee relationship in the context of the Act will inevitably depend on the particular provisions of the Act—provisions that have no applicability elsewhere.

Second, the Pueblo urges the Court to grant certiorari to address the role of canons of statutory construction in cases involving questions of Indian law. *See* Pueblo Pet. at 14. Again, the Pueblo has not explained why this issue needs to be addressed at this time. Numerous decisions of this Court have discussed when canons of statutory construction favoring Indians should be applied, *see, e.g.*,

County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, —— U.S. ——, 60 U.S.L.W. 4067, 4072 (U.S. Jan. 14, 1992); *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985); *Starr v. Long Jim*, 227 U.S. 613, 622-23 (1913), and when they should not. *See, e.g., Amoco Production Co. v. Gambell*, 480 U.S. 531, 555 (1987) (canons of construction do not permit courts to disregard congressional intent); *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 (1986) (same); *Oregon Dept. of Fish and Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 774 (1985) (same); *Rice v. Rehner*, 463 U.S. 713, 732-33 (1983) (same); *Andrus v. Glover Construction Co.*, 446 U.S. 608, 618-19 (1980) (same). There is no need for the Court to address this issue at this time.

In any event, this case does not present a suitable opportunity to review the canons of statutory construction applicable to Indian law issues. The court below determined that Congress clearly manifested its intention that this suit by the United States and the Pueblo be barred. As the cases just cited make clear, the canons of construction favoring Indians do not permit courts to disregard congressional intent.

III. CONTRARY TO THE PUEBLO'S CONTENTION, THE DECISION BELOW DID NOT EXTINGUISH THE PUEBLO'S TITLE.

The Pueblo's final argument is that the decision below "might have extinguished" the Pueblo's title to the land claimed in this lawsuit. *See* Pueblo Pet. at 14-15. This argument is patently wrong. Courts interpret law in order to adjudicate disputes; they do not themselves extinguish Indian title. The court below simply held that the Pueblo's claim was barred by the Pueblo Lands Act. The real point of the Pueblo's argument appears to be that the decision below is incorrect. As respondents have already discussed, this is not a sufficient reason for this Court to grant review, and in any event the decision below was correct.

The Pueblo Lands Act, by establishing the Pueblo Lands Board to determine the status of pueblo titles to land, by authorizing the United States to bring quiet title actions with respect to pueblo land, and by authorizing the pueblos themselves to bring suit to adjudicate their titles to land but limiting the time during which such suits could be brought, created a comprehensive structure to resolve the status of pueblo titles to land within the exterior boundaries of the pueblo grants. Section 2 of the Act gave the Board the authority to determine that a pueblo's title to land within the boundaries of a pueblo's grant was extinguished. Once the Board made its determination, the Pueblo then was obligated by section 4 of the Act to assert a timely challenge to the Board's determination in order to avoid the statutory bar. The failure to do so precludes both the United States and the Pueblo from bringing this suit.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted,

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No. 91-1346

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

LELAND THOMPSON, JR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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REPLY BRIEF FOR THE UNITED STATES

1. The central submission in our petition is that statutes of limitation are not construed to bar suits by the United States in the absence of an express provision to that effect. See Pet. 10-12. The bulk of respondents' argument (Br. in Opp. 10-21) is devoted to the proposition that "the object of the [Pueblo Lands] Act" (Br. in Opp. 12; see *id.* at 12-13), the structure of the Act (*id.* at 13-15), and post-enactment legislative history (see *id.* at 15-16) can be taken to support the court of appeals' conclusion that the Pueblo Lands Act implicitly bars this suit by the United States. But the very length and complexity of this presentation, together with the pronounced absence of any suggestion that any particular

provision of the Act affirmatively bars this suit, establishes that the case squarely presents the question raised by the petition. The fact of the matter is that respondents must concede that no provision of the Act suggests that this suit is barred; the court of appeals' conclusion that the suit is barred rests entirely on its notions of the policies that should have been implicit in the statute. That mode of analysis is incorrect, for the reasons set forth in detail in our petition.

In any event, respondents' discussion of the structure of the Pueblo Lands Act is fatally flawed. At the core of their submission is the proposition that the issuance of a report by the Pueblo Lands Board (the Board) in itself constituted a definitive resolution of claims to title. See Br. in Opp. 19-21. But under that view, the Act's twin processes for definitive resolution of title issues identified by the Board[1]—quiet

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[1] Contrary to respondents' argument (Br. in Opp. 19-20), there is nothing odd about a statutory requirement that a mere administrative finding that the title of the Pueblo and the United States has been extinguished must be finalized by a public filing to be made by one of the members of the Board. This did not "give the Secretary a second, unilateral, opportunity to reverse a determination of extinguishment in which he had already joined." See *id.* at 20. Rather, it reflects the commonsense notion that final disposition of title to real property claims customarily is accomplished either by judicial decree or filings in official public records, rather than by administrative determinations. The "report" of the Board—an Executive Branch body—was intended to guide the Board's members in performing further functions under the Act—not, in itself, to bind the United States and private parties. We think the most likely reason that the Secretary made no such filing with respect to the overlap land in question here is that nobody appeared before the Board claiming title to the land—a circum-

title suits brought by the Attorney General under Section 3 for land in which the Board found that Indian title had not been extinguished, and the filing of a plat and field notes under Section 13 for land to which the Board believed Indian title had been extinguished—would be rendered entirely superfluous, if not counterproductive.[2] Those sections provide express and clear procedures that, if completed, barred future claims by the United States. Any interpretation of the Act that renders those provisions entirely superfluous, and assumes that Congress intended implicitly to bar suits by the United States under other provisions that do not even mention the United States, cannot pass muster under this Court's decisions. Those decisions require "not a liberal, but a restrictive, a strict, construction of such statutes when it has been urged to apply them to bar the rights of the Government." *United States* v. *Whited & Wheless, Ltd.*, 246 U.S. 552, 561 (1918).[3]

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stance that suggests that the procedures of the Act were simply not invoked to bring about a definitive resolution of the title dispute at issue in this case.

[2] Moreover, this submission entirely ignores the fact —acknowledged by the court of appeals—that Section 14 of the Act (which is not mentioned in respondents' argument) constitutes an "express congressional directive," Pet. App. 13a, that the Board was not to dispossess Indians on the basis of overlapping grants. Section 14 provides powerful evidence that the Board's determination should not be construed as a final resolution of the Pueblo's claim in this case.

[3] Respondents also suggest (Br. in Opp. 22 n.15) that the United States' suit is barred by the language of the 1879 statute confirming respondents' grant, which, as respondents note, operated "as a quitclaim or relinquishment of all title or claim on the part of the United States." See *ibid.* As respondents note, however, the same statute expressly preserved whatever

2. Respondents also suggest (Br. in Opp. 22-24) that *United States* v. *Title Insurance & Trust Co.*, 265 U.S. 472 (1924), supports the court of appeals' reasoning that any bar the Pueblo Lands Act interposed against suits by the Pueblo should be extended by implication to bar suits by the United States in its capacity as trustee for the Pueblo. This contention is meritless. As explained in our petition (Pet. 14-15), the United States' right to sue is distinct from that of the Pueblo, arising "out of its right to invoke the aid of a court of equity in removing unlawful obstacles to the fulfillment of its obligations [as a guardian of the Indians]." *United States* v. *Minnesota*, 270 U.S. 181, 194 (1926). Thus, the existence of a bar against suit by the Pueblo in no way would suggest that the United States could not sue to uphold the Pueblo's title.

Moreover, the differences between *Title Insurance & Trust Co.* and this case illustrate precisely why the United States' suit here is not barred. That case involved the Act of Mar. 3, 1851, ch. 41, 9 Stat. 631. Like the Pueblo Lands Act, the 1851 Act established an administrative tribunal to review land claims, see § 1, 9 Stat. 631, and provided a number of express procedures for extinguishing rights of the United States, one of which stated that "any patent to be issued under this act, shall be conclusive between the United States and the * * * claimants." § 15, 9 Stat. 634; see *Title Insurance & Trust Co.*, 265 U.S. at 481;

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adverse rights the Pueblo then held. Hence, the only fair reading of the grant is to bar only the United States' right to claim legal title to the land on its *own* behalf. Because the Pueblo's right to sue clearly was preserved (as respondents concede, see *ibid.*), it is not reasonable to suggest that the 1879 statute prohibited the United States from asserting rights as trustee for the Pueblo.

Summa Corp. v. *California*, 466 U.S. 198, 203 (1984) (summarizing procedures under the 1851 Act). The *Title Insurance & Trust Co.* case involved successors to individuals who complied with the procedures established by the 1851 Act, brought claims before the commission, and received valid patents that, under the express terms of the 1851 Act, were conclusive against the United States. Some time later, the United States attempted to raise claims in its trust capacity, on behalf of Indians who had failed to contest the patentees' claims before the commission in a timely manner. This Court rejected the Indians' claims, agreeing that "the patent issued on the confirmation of the grant passed the full title, unencumbered by any right in the Indians." 265 U.S. at 482. In this case, by contrast, the predecessors in interest of respondents not only failed to file any claim with the Board or establish adverse possession under the standards set forth in the Pueblo Lands Act; they failed to secure either a judgment in a Section 3 action (which would have been conclusive against the United States under Section 5 of the Pueblo Lands Act) or the filing of a plat and field notes describing their land (which would have been conclusive against the United States under Section 13). Accordingly, the principles of the *Title Insurance & Trust Co.* case in no way suggest that this suit by the United States is barred.

To the contrary, for the reasons stated in our petition, this Court's decision in *United States* v. *Candelaria*, 271 U.S. 432 (1926), strongly suggests that this suit should be allowed to proceed. In *Candelaria*, the Court held that the United States was not barred from bringing a quiet-title action on behalf of the Pueblo of Laguna against non-Indians who previously

had prevailed in a quiet-title action brought by the Pueblo concerning the same land. Under *Candelaria*, the United States would not be barred here even if the Pueblo of Santo Domingo had responded to the Board's report by instituting an independent suit, as allowed by Section 4. The court of appeals' conclusion that the United States nevertheless is implicitly barred by the Pueblo's mere failure to file suit is simply insupportable.

For the foregoing reasons and those given in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

KENNETH W. STARR
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MARCH 1992